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No.

Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JAY GRUSHKIN,

Petitioner

vs.

SANTA CLARA SUPERIOR COURT

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JAY GRUSHKIN
Petitioner In Pro Per
1381 Franchere Place
Sunnyvale, Ca. 94087

408-739-1829

October 29,1990

QUESTIONS PRESENTED

1. Does the First Amendment right to Petition Government for Redress of Grievances and the Due Process clause require that court proceedings taking liberty and property be reported by a court reporter ?

2. Does the fourteenth amendment equal protection clause prohibit a state judge denying to some citizens a customary right to have court proceedings reported ?

3. Does Due process of law prohibit a state system where lawyers are permitted to sit as if they were elected and competent judges and claim to be judges *pro tem* to enter orders taking liberty and property of citizens ?

4. Following this court's decision in *Keller v. State Bar,* 495 U.S.

___, 110 L.Ed.2d.1, 110 S.Ct. ____ overruling 767 P. 2d. 1020, 255 Cal. Rptr. 542, (June 4, 1990), may a state revoke a final judgment of custody of a child without statutory notice to the custodial father and his attorney of record if a non-lawyer volunteer of a California State Bar Association, also ex parte without statutory notice or any hearing, claims to have enrolled the attorney of record as an inactive member of the trade group when the statute requires notice to the attorney of record when she is not suspended or removed ?

5. Following this court's decision in Keller v. State Bar, Supra, does a state deny the equal protection of the law by refusing to apply

state law requiring 10 days' notice to attorney of records and parties, written motions specifying grounds, hearings, grounds, reported proceedings by asserting that none of those rights apply if the citizen's attorney of record is ex parte, also without notice or hearing, enrolled by a volunteer of a state bar association involuntarily as an inactive member of their trade group for her refusal to take an oath to its alleged State Bar Court ?

6. Following this court's decision in Keller v. State Bar, supra, are state laws which claim a non-lawyer volunteer of a trade group, ex parte, abolishes the contracts of employment of citizens with their lawyers state laws impairing the

obligation of contracts in violation of Article 1, section 10 of the United States Constitution ?

7. May a state discriminate in parenting rights and solely by reason of sex, so that fathers are denied rights accorded to mothers of notice to them, motions, service of process, hearings, findings of the " best interests of a child " prior to revocation of their final custody judgments ?

8. May a White father be discriminated against by a Black judge and Black lawyer acting on behalf of an Hispanic mother so as to deny a White father all of his due process rights- notice, service, motion, hearing, grounds, opportunity to appear and defend prior to revocation of his permanent Custody

Judgment and do so solely by reason of his White race ?

9. After revoking, without notice, motion, or hearing, a Final custody judgment, may a state condition the right to parent one's child on a parent's submission to a lay counselor making a judicial order of parenting rights and require a parent to forfeit their rights to a hearing, court proceedings, a fair and impartial judge, right to introduce evidence, confront and cross-examine witnesses, and their right to have findings consonant with state law by a lawful judge of a lawful court of law ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

HON. LA DORIS CORDELL
Judge of the Superior Court
Santa Clara Superior Court
191 North First Street
San Jose, Ca. 05113

ROSIE JIMINEZ GRUSHKIN
C/O Richard C. Williams, Esq.
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Suite 904
San Jose, Ca. 95113

TABLE OF AUTHORITIES

CASES :

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In re Marriage of Skelley (1976) 18 Cal. 3d. 365 56

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Conway v. State Bar, 47 Cal.3d.1107, 255 Cal. Rptr. 390, 767 P. 2d. 657 (1989) 3,10

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Foy v. Foy (1937) 73 P. 2d. 618, 23 C.A. 2d. 543 39

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Gortner v. Gortner, (1976) 60 C.A. 3d. 996, 131 Cal. Rptr. 919 46

In re: Gault, (1966) 387 U.S. 31 7 49,51,54

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No.

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JAY GRUSHKIN,

Petitioner

vs.

SANTA CLARA SUPERIOR COURT

Respondent

Your Petitioner, a custodial father under a Final Judgment entered three years ago, which, as herein described, was revoked ex parte without notice, motion, or hearing, appears In Pro Per.

Petitioner appears without counsel as California attorneys are too frightened of ex parte takings of their careers and next day

arrest and imprisonment to represent any citizens facing similar ex parte takings.

The principal question presented is whether a custodial father may be denied statutory notice of a proceeding to revoke his three year old judgment by asserting notice to him and his attorney of record are not necessary nor is any motion or hearing if his attorney of record is ex parte enrolled as an inactive member of the California State Bar Association by a non-lawyer volunteer of that trade group, when the statutes require notice to the attorney of record when the attorney of record is not suspended or removed and also to the party at his residence address ten days before hearing.

The second serious constitutional issue is whether a state may condition a parent's right to see one's child on waiver of a judge, hearing, evidence, and statutory findings by a real judge of a court of law and be forced to submit to a non-lawyer lay person making a court order.

The California state supreme has authorized vested rights to be revoked without notice or hearing by a lay person and conditioning rights of citizens on their submission to orders made by a private unelected person. Conway v. State Bar, 47 Cal. 3d. 1107, 255 Cal. Rptr. 390, 767 P. 2d. 657 (1989).

Petitioner and his daughter, Natassia, age 5, were subject to the police invading their home

September 6,1990, taking Natassia and delivering her to her mentally unstable mother who had been denied all custody rights in the 1987 Final Judgment due to her prior abduction and kidnapping of said child at age 1 and her history of mental instability. Appendix B: 4-5.

The no motion/ no notice Family Court order revoking the 1987 Final Custody Judgment which had awarded full custody of Natassia to Petitioner was entered that day by a San Jose judge. The judge awarded exclusive custody to the mother ex parte. Appendix F. This was done without grounds, without a motion, without notice, without a hearing. It was done without evidence. It was done by a black judge for a black lawyer acting for an Hispanic

mother while the Petitioner is white. Appendix B: 44-46. It was done by the San Jose judge so as " to get Mr. Grushkin's attention." Appendix F.

Said order requires Petitioner to allow a lay person make an order if he is to ever see his daughter again and waive his rights to a hearing, judge, evidence, confrontation, cross-examination, courtroom in order to see his daughter. These forfeitures of constitutional rights in order to parent are known as San Jose's " Screening " rules. Appendix B: 46-53.

Petitioner requests this Court take jurisdiction to void the San Jose state court's scheme known as " Screening," approved by the California Supreme Court, and to de-

clare unconstitutional state practices of revoking final judgments of parenting rights based on sex and race discrimination and without required notice, motion, hearing to select parents on the basis such state practices deny to said targeted citizens the equal protection of state laws.

OPINIONS BELOW

The California Supreme Court's order denying the Petition after Judgment by the Court of Appeals, entered October 17,1990 appears at Appendix A, and the Petition at Appendix B. The Court of Appeals' order denying the Petition entered September 14,1990 appears at Appendic C, and the Petition at Appendix D. The Santa Clara Superior Court Ex Parte Order of September 6,1990

revoking the 1987 final judgment appears at Appendix E. The transcript of the September 6, 1990 proceeding appears at Appendix F.

The constitutional issues were first raised in the Court of Appeals on September 7, 1990.

JURISDICTION

Jurisdiction is invoked under 27 U.S.C.s. 1257 where the California Supreme Court's denial of the emergency Petition has decided United States Constitutional issues in a manner contrary to the express holdings of this Court concerning rights to notice, service, motions, time to prepare, hearings, and required grounds prior to the revocation of vested rights as set forth in In re: Gault, (1966) 387 U.S. 31, Armstrong v. Manzo, 380 U.S.

545, 552 (1965), and Mathews v. Eldridge, 424 U.S. 319, and this court's decisions voiding state processes which force citizens to forfeit one constitutional right in order to have another in Speiser v. Randall, 357 U.S. 513 (1958), Frost and Frost Trucking Co. v. Railroad Commission, 272 U.S. 583 (1926). This petition is timely filed within sixty days of the California Supreme Court's order Oct. 17, 1990.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION

Article I, section 10 No State shall pass any Law impairing the Obligation of Contracts...

Amendment 1. Congress shall make no law abridging the right of the People to petition the Government for a redress of grievances.

Amendment V. No person shall be deprived of life, liberty, or property, without due process of law... Amendment XIV, section 1. nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

CALIFORNIA PROVISIONS

The applicable provisions are set forth in the Appendix.

STATEMENT OF THE CASE

I. Background

In the wake of the California Supreme Court's authorization of ex parte takings by a non-lawyer volunteer of a California State Bar Association and forcing a licensed lawyer to let a volunteer decide if he works and who he should repre-

sent, Conway v. State Bar, 47 Cal. 3d. 1107, (1989), the San Jose courts have followed suit with ex parte revocations of final judgments, refusals to have court proceedings reported, with lawyers or lay people sitting as judges, police invasions of innocent citizens' homes taking their children and changing custody to the other parent without notice, and then requiring these targeted citizens, just as the Jewish people were required in Germany, to give up their constitutional rights to a judge, hearing, public proceeding, trial in a court of law, by letting a lay person privately make an order if they shall ever be allowed to see their children again. If the citizen does not forfeit all their

rights, they can not see their children again.

II. Facts

On August 24,1987 a Final Judgment of Dissolution (Divorce) was entered in the Santa Clara Superior Court. The parties were Petitioner, Jay Grushkin and Rosie Grushkin, Respondent in the control action docket no. 607271. The cross-action of Rosie Grushkin vs. Jay Grushkin, docket no. 607066 was consolidated into this case. The Final Judgment on both cases was obtained by Petitioner's attorney of record, Betsey Warren Lebbos. Appendix G.

Custody of Petitioner's daughter, Natassia, age 2, was awarded to Father Petitioner. Only supervised visitation, if any, was a-

warded to the mother. The mother was found in contempt on 18 counts for thwarting visitation. The Judgment directed that the abduction/ kidnapping of said child by the mother be referred to the District Attorney's offense. A bench warrant issued for the mother's arrest due to her abduction/kidnapping of said child. Said Final Judgment appears at Appendix G.

Less than a year later, said mother was apprehended on said bench warrant, arrested, and imprisoned. Natassia, then age 2, was turned over to her custodial parrent, Petitioner herein, with whom she has resided continuously since early 1988. Appendix B: 3-4.

As stated by Petitioner in his emergency Petition September 7,

1990, " .. Although an attorney called months ago indicating his interest in representing the real party in interest, (the mother), I have never been served with any papers and have never heard from this lawyer again.... Pursuant to the attached, my attorney of record, who was required to be served, was never served either.... On September 6, 1990, when I arived at one of the stores in the afternoon, someone handed me a letter postmarked September 4, 1990 .., claiming that I was supposed to be in Court that morning, September 6, 1990 at 8.45 A.M. Although the letter is dated August 30,1990, the envelope from the attorney, Richard Williams, was, in fact, not postmarked until September 4 and was

sent to a business address where I do not work regularly." Appendix D: 13, para. 20-22.

As stated in Father's Emergency Petition to the California Supreme Court, " Natassia's long fought-for recovery for the last two and one half years from the abduction and kidnapping and her progress in her stable home, with her father and grandparents, her friends, her brand new school she had just started that day in her first day of first grade, was destroyed. On the evening of September 6,1990, all gains were lost when the police re-terrified Natassia, by crashing into her safe home, grabbing her, flashing some order, and taking her away with her dangerous, mentally unstable mo-

ther. The only transcript shows the Judge seems to think nothing of destroying children's stabilities and revoking permanent judgments arbitrarily..." Appendix B: 4-5.

It is admitted the attorney who obtained the order revoking the permanent judgment on behalf of the non-custodial mother, Richard Williams, without notice to the Petitioner or his attorney of record, was not, in accordance with California law, the attorney for such party as she had a different attorney of record and had failed to notify either the Petitioner or his attorney of record of any change of attorneys. Appendix B: 35-38. (1)

This attorney, Richard Williams, admitted that he did not

have any written motion pending on September 6, 1990 when he obtained an order revoking the permanent custody judgment. The attorney admitted that he was in court solely on a claimed letter he sent and proof of service of the letter only. " In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. " Appendix F: 2:5-7.

It is also undisputed that this claimed letter from the attorney, which appears at Appendix H-1 was dated August 30,1990. The

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(1) In order to be an attorney of record for the mother, the attorney was required to obtain a substitution of attorneys duly signed, filed, and served on both the opposing party and his attorney of record prior to the court being authorized to recognize him. California Code of Civil Procedure sections 284 and 285.

proof of service of the letter is dated August 31,1990. Appendix H-2. But the actual postmark of the envelope enclosing the letter was September 4, 1990 with the hearing on September 6,1990 at 8:45 a.m. Appendix H-3.

State law required ten days written notice with five days added for service by mail. It required a written motion on a form approved by the Judicial Council and not a letter. Ca. Code of Civil Procedure sections 1003 and 1005, California Rules of Court, Family Law Rules, Rules 1225 (a) and 1285.10.

The letter was sent to one of the Petitioner's stores and not, as required by state law, served on him at his residence. (2) Said attorney and judge admitted the

claimed letter was not served as required at the Petitioner's residence. " This is the letter I sent in. .. It was sent to a place called Lowe Paint Company ?... That's where he worked. He has gotten mail at that company. That is his address... And you got no response ? ... No, not to mention Mrs. Grushkin spoke to him." Appendix F:2: 10-16.

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(2) Ca. Code of Civil Procedure s. 1011 states, " The service may be personal, by delivery to the party or attorney on whom the service is required .., or it may be as follows... (b) if upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at...the party's residence, between ... 8 in the morning and six in the evening, with some person of not less than 18 years of age ... If the party's residence is not known, then service may be made by delivering the... notice or papers to the clerk of the court.."

It was also agreed by the attorney and the judge that Petitioner's attorney of record was never served. State law, as herein described, requires notice to an attorney of record unless the attorney is suspended or removed. The attorney is not suspended or removed. The transcript indicates that the state judge and attorney ignored the need for notice to the attorney of record, as follows, at Appendix F:2: 1-18; 4: 11-12.:

" The Court: Number 8, Grushkin

Mr. Williams: Richard Williams appearing for the moving party, Mrs. Grushkin. In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. He is not here and he is aware of it. The Court indicated that you would give us a change of custody order. If I may approach the bench. This is the letter I

sent ...

The Court: I am going to change custody."

The September 6, 1990 order revoking the final custody judgment of 1987 indicates that it was entered on an alleged motion of May 22, 1990. Appendix E-1. Said motion admittedly had a blank proof of service. Appendix I-2. That motion had been returnable July 16, 1990. Said motion appears at Appendix I. The attorney admits he never had it served on either the Petitioner nor his attorney of record. Appendix H: 2-3.

The court record indicates the San Jose judge did not have her proceedings reported on the return date, July 16, 1990. Appendix B:2, footnote 2. Although state practice

and local rule require an unserved motion must be taken off the calendar on the return date when there is no proof of service, the calendar note indicates the San Jose judge put " continued to 8-15-90 " instead. (3) On August 15,1990, there is no record with the judge. Appendix B: 2, footnote 2.

Instead, a lawyer, Sandra Cully, was permitted to appear as

(3) Santa Clara County Local Rule 17, Section A, Law and Motion, entitled " Time Requirements for Filing and Service," states the following : " Moving and responsive pleadings must be filed and served on the opposing party or attorney." Santa Clara Family Court Rules, Rule 17, Section A, " Law and Motion," states under 3." Proof of Service," that " if a responding party fails to appear at a hearing, the moving party must immediately submit proof of timely service to the Court; Otherwise, the matter will be taken off calendar. (emphasis added). "

a Judge Pro Tem. Appendix B:23. San Jose judges regularly let bar politician lawyers sit for them. This lawyer then let Petitioner's former wife, Rosie Grushkin, appear as Petitioner's attorney. Appendix B: 23. Ms. Grushkin is not a lawyer. She obviously could not be the lawyer for her opposing party. Then the lawyer let Rosie Grushkin's lawyer appear as the other side representing Rosie Grushkin. Appendix B: 23.

This lawyer then entered an order on this fraud of Rosie Grushkin claiming to be Jay Grushkin's lawyer ordering the " parties" to mediation and for Petitioner to fill out the papers by September 1, 1990. Appendix B: 23.

However, for unknown reasons,

since none of the proceedings were reported by the judge, except the fifth court appearance on September 6, 1990, attached hereto as Appendix F, the case without a motion, notice, service, appears on an August 23,1990 calendar. Appendix B: 23-24. Once again the judge lets a lawyer replace her. The lawyer, Sandra Cully, now lets respondent's attorney who is not the attorney of record, consent to this lawyer sitting without any appearance from the other side. Appendix B:25.

The judge then lets Mr. Williams " waive a reporter." Appendix B:25. She then enters an order that the case is continued to the next available space and " Dad must be present at screening, if not a bench warrant will be issued."

Appendix B: 25.

Then on August 29,1990, the Judge once again refuses to have her proceedings reported and orders Mr. Williams to go to the calendar and get a new date and send notice to the father. Appendix B: 26-27.

On September 6, 1990 the Judge allows the final judgment to be revoked on a claim of Mr. Williams he sent a letter and does so " in order to get Mr. Grushkin's attention." Appendix F:2:1-18, 5:6-8.

The judge herself is involved in an acrimonious divorce where she has refused to permit any physical custody rights to her former husband and is residing with another women. (4)

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(4) In re: marriage of Cordell, Santa Clara Superior Court, docket no. P49071.

The no motion/ no notice order indicates it was entered with no evidence presented. Refer Appendix E:1 indicating order was entered with no evidence presented as the box for evidence presented is not marked off. It awarded custody to the mother with reasonable rights of visitation to father. It concludes," Should Petitioner wish to contest this order, the parties shall immediately participate in screening through Family Court Services on an emergency basis." Appendix E:4.

Screening, as presented to the California Supreme Court, is San Jose's revocation of the State's Mandatory Mediation law and unlawfully requires a parent to forfeit their right to a hearing

before a judge and submit to an order of custodial rights entered by a non-lawyer in order to parent, and which procedure herein described is unconstitutional as an unlawful delegation of judicial power to a lay person and abolishes the parent's freedom to contract.

Although state law effective January 1, 1990 prohibits any ex parte custody orders, unless there is a showing of immediate harm to the child or immediate risk the child will be removed from the State, San Jose has ignored state law for years and selectively has judges and lawyers entering oral deals in the hallway to enter orders without notice or hearings or grounds. (5) Requests to the Federal government to indict

the judges and lawyers involved have been made. To prevent that, judges are now refusing to have their proceedings reported in select cases, such as the Petitioner's. As Appendix F indicates, the judge and the lawyer discuss their pre-arranged deal to change custody entered before the hearing. " The Court indicated it would give us a change of custody order. " Appendix F:1: 7-8.

As the transcript makes clear, the court deliberately refused to make the required statutory find-

(5) " The Court shall refrain from making any order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. The court must restrain the person receiving custody from removing the child from the state." Ca. Civil Code section 4600.1.

ings as there were no grounds to revoke the final custody judgment except the judge's personal desire to " get Mr. Grushkin's attention." Appendix F: 5: 6-8.

Such denial of rights to the attorney of record's clients and their children in order to retaliate against their attorney going to the Grand Jury and her refusal to take an oath to an alleged State Bar Court or enroll in it is a matter of which this Court should take judicial notice pursuant to the pending Petitions with this Court. Retaliating against thousands of clients and children on completed final judgments obtained over 15 years because their attorney of record is seeking to protect thirty million United States citi-

zens' rights to vote to create their own courts and elect and remove their own judges to their own courts is a matter of serious Constitutional concern.

REASONS WHY THE WRIT SHOULD BE GRANTED

I.

DUE PROCESS OF LAW REQUIRED NOTICE TO THE PETITIONER'S ATTORNEY OF RECORD

In light of this court's decision that " a parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection," as stated in Little v. Streater (1980) 452 U.S. 21, at p. 21, Stanley v. Illinois, 405 U.S. 645,

651, do state procedures where no notice is afforded to either the attorney of record or the party, no written motion, no grounds stated or proved, and no hearing held prior to revocation of a Final custody judgment such state practices and procedures which offend the minimal Due Process requirements of the fifth and fourteenth amendment ?

Both the judge and the lawyer confirm no notice was attempted to be given to Petitioner's attorney of record prior to revocation of the Final Judgment. The attorney said, " In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. " Appendix F: 2:5-7, and " This is the letter I sent

in. .. It was sent to a place called Lowe´Paint Company ?... That's where he worked. He has gotten mail at that company. That is his address...And you got no response ? ... No, not to mention Mrs. Grushkin spoke to him." Appendix F:2.

Mr. Williams admitted in his submission to the Court of Appeals that he never served either the Petitioner or his attorney of record, as follows, at Appendix H: 1: 28, 2: 1-21:

> " .. I called and spoke to Mr. Grushkin, acknowledging that he had not been properly served and not been given appropriate notice of the July 16, 1990 hearing. Mr. Grushkin and I agreed that the matter would be continued to the 15th of August, 1990, and that he would be there with his attorney. I advised him that the parties would be ordered to mediation at Family Court Services who would sort the matter out. Mr.Gruskin failed to appear (as per his agreement) on

> August 15, 1990 at 1:30 p.m. and the Court ordered me to mail notice to Mr. Grushkin of a continued hearing date... on August 29,1990 I was directed to send Mr. Grushkin yet another letter indicating there was a screening appointment and that if he failed to appear the Court would issue an order for temporary change of custody.. .... The last date was September 6, 1990, and again he failed to appear and the Court changed custody."

The Petitioner disputes such an alleged oral conversation took place, and that " Although an attorney called months ago indicating his interest in representing the real party in interest, I have never been served with any papers and have never heard from this lawyer again...Pursuant to the attached, my attorney of record, who was required to be served, was never served either." Appendix D: 13: para 20-21.

Petitioner's attorney of record declared, in Declaration of No Notice, at Appendix D: 37-39, the following :

" I, Betsey Warren Lebbos, do hereby declare that I am a duly licensed attorney at law and am the attorney of record herein for the Petitioner. I have been an attorney for nineteen years. I am not and have never been suspended or disbarred. Pursuant to the state law cited, a post-dissolution judgment motion is required to be served on both the party himself and his attorney of record in the dissolution proceeding. I obtained the Dissolution Judgment and exclusive custody order with only supervised visitation to the real party in interest if and when the child was ever recovered from the abduction and kidnapping by the mother.... I have never heard of Mr. Williams. My name and address and phone number are listed in the yellow pages under " Attorneys." My phone number has been the same for about four years. At no time have I received any oral or any written notices from this Mr. Williams or his client about anything to do with the Grushkin case. I return phone calls in twenty-four hours. I have never received any phone calls or communications from this lawyer."

California Civil Code section 1014 provides a " defendant appears when an attorney gives notice of appearance for him," and " After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given." Pursuant to California Rules of Court, Family Law Rule 1236, said provisions apply to Family law matters.

As the Final Judgment entered in both actions indicates, Petitioner's attorney of record is Attorney Betsey Warren Lebbos. Appendix G.

Civil Code section 1015 states, " But in all cases where a party has an attorney in the action or proceeding, the service of pap-

ers, when required, must be upon the attorney instead of the party, except service of subpoenas, writs, and other process issued in the suit, and of papers to bring him into contempt. If the sole attorney for a party is removed or suspended from practice, then the party has no attorney within the meaning of this section."

As stated in Reynolds v. Reynolds (1943) 134 P. 2d. 251, 21 C. 2d. 580, this section is concerned only with whether there is an attorney of record, not whether the party is represented by an attorney. In sum, attorneys who are the attorneys of records on final judgments going back 50 years and who subsequently decide to be an inactive member of the State Bar

for a year in order not to have to pay a huge dues bill for the year would have to go back through all of their 50 years of records and obtain new counsel for clients who don't need any on those thousands of final judgments when the parties do not need any new counsel and do so solely for that one year in order to not have their final judgments revoked ex parte.

The statute obviously seeks to address notice only to the attorney of record, unless the admitting court has suspended the attorney, not whether the client will now hire the attorney to represent them in the new controversy after the final judgment has been entered years before. When an attorney is suspended or removed, the Cali-

fornia Supreme Court orders the attorney to notify all clients. Ca. Rules of Court, Rule 955. When an attorney enrolls as an inactive member of the trade group, no notification is required to anyone.

Thousands of California attorneys enrolled as inactive members of the State Bar in order to avoid paying it 84 million dollars in dues, yet they are still the attorneys of record on final judgments going back years where notice to them is intended to be required prior to their clients having their old and final judgments revoked.

The statute clearly does not waive notice if an attorney enrolls or is enrolled as an inactive member of the State Bar. although the California Supreme Court's denial

seeks to add that to the plain meaning of the statute.

Consistent California law has required that service of a motion to modify a final judgment of dissolution involving the court's continuing jurisdiction over the welfare of children affected by said judgment must be made on the attorney of record under this section. Conae v. Conae (1952) 241 P.2d.266, 109 C.A. 2d. 696, Russ v.Russ (1945) 156 P. 2d. 767, 68 C.A. 2d. 400, Foy v. Foy (1937) 73 P. 2d. 618, 23 C.A. 2d. 543.

On February 14,1989 a non-lawyer volunteer of a California State Bar Association claims he ex parte, also without notice or hearing, enrolled the Petitioner's attorney of record as an inactive member of

their trade group. The attorney does not want the membership. The California Constitution says such membership is automatic anyway. Article 6, section 9, Ca. Constitution. She refused and does refuse to raise her hand and take an oath to a state bar court modeled on the special interest, trade group courts of Communist China. The 30 million United States citizens in the state never voted to allow the trade group to have a court. The attorney took an oath to the People and their constitutional rights to vote to create their own courts and elect and remove their own judges to their own courts. She can never break that oath and raise her hand to a court the People never voted to have in their state.

The attorney's license to practice law is not from a trade group. It is from a state supreme court which has issued no order preventing her from practicing law. see Lebbos v. Supreme Judicial Court, United States Supreme Court, docket no. 90-401, now pending, and also Lebbos v. State Bar " Court ", docket no. now pending.

Pursuant to this court's decision in Keller v. State Bar, supra, the California State Bar Association is a private membership trade group, akin to a labor union and not a governmental agency, for purposes of a Federal question. This Court stated the following :

" Of course the Supreme Court of California is the final authority on the 'governmental' status of the State Bar of California for purposes of state

law. But it's determination that respondent is a 'governmental agency,' and therefore entitled to the treatment accorded a governor, a mayor or a State Tax Commission, for instance, is not binding on us when such a determination is essential to the decision of a federal question. The State Bar of California is a good deal different from most other entities that would be regarded in common parlance as 'governmental agencies.'....

The state bar does not admit anyone to the practice of law, it does not finally disbar or suspend anyone nor does it ultimately establish ethical codes of conduct. All of these functions are reserved by California law to the state supreme court." (See Cal. Busn. & Prof. Code Ann. s. 6064, (1974) (admissions); s. 6067 (rules of professional conduct), s. 6100 (West Supp.1990) (disbarment or suspension)(emphasis added).....

The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. Its members and officers are such not because they are citizens or voters, but because they are lawyers. "

Are this court's decisions in Armstrong v. Manzo (1965) 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d. 65, and Mathews v. Eldridge 424 U.S. 319 (1976) requiring notice and an opportunity to be heard at a meaningful time and place applicable to require that notice must be given to an attorney of record who is not suspended nor removed from the practice of law of any proposed modification of the final judgments she has obtained over 15 years ?

II.

THE ORDER REVOKING THE FINAL JUDGMENT WITHOUT NOTICE TO PETITIONER'S ATTORNEY OF RECORD DENIES HIM AND HIS DAUGHTER THE EQUAL PROTECTION OF STATE LAW

The question presented is whether the refusal of the state supreme court, the court of appeals,

and the trial court to require notice to an attorney of record in accordance with state law while all other citizens are guaranteed that notice to their attorney of record is required prior to revocation of their final judgments denies this Petitioner and his child the equal protection of said state law ?

Had the statute intended to not require notice to attorneys of record who become inactive members of the trade group later, the statute would clearly have so declared. Instead, it is limited by its terms to no notice only if the attorney is suspended or removed from the practice of law. Petitioner's attorney is not suspended nor removed from the practice of law. Is the State supreme court's refusal to

void the ex parte order when no notice was given to Petitioner's attorney of record an arbitrary and capricious discrimination against the clients of Attorney Betsey Warren Lebbos in a terrifying attempt to force her to take an oath to a communist-style trade group court and forfeit the right to vote of 30 million United States citizens in order to save her own clients' children's lives and safety ?

III.

EQUAL PROTECTION OF THE LAW IS DENIED TO A FATHER AND HIS DAUGHTER WHEN THEY ARE NOT SERVED NOTICE IN ACCORDANCE WITH STATE LAW

Because the attorney of record in a final Divorce judgment may die many years later or move, and this Court should take judicial notice

that, unlike other final judgments, Courts have continuing jurisdiction over children in a divorce action which may go on for over 20 years, state law was changed to require that notice of any motion post-final Dissolution Judgment must be given to both the attorney of record in the Dissolution Judgment and to the party personally. Ca. Civil Code section 4809 states that " after the entry of a final judgment decreeing the dissolution of the marriage.. no modification of such judgment... and no subsequent order in such proceedings shall be valid unless any prior notice required to be given to a party to a proceeding be served, in such manner as otherwise permitted by law to be served, upon the

party himself. For such purposes, service upon the attorney of record shall not be sufficient. " Gortner v. Gortner, (1976) 60 C.A. 3d. 996, 131 Cal. Rptr. 919.

State law prohibits a party serving. Sullivan v. Sullivan (1967) 64 Cal. Rptr. 82, 256 C.A. 2d. 301. The attorney admitted any claimed serve of a motion by Rosie Grushkin by her, which Petitioner says was never served, was void. Mr. Williams instead asserts he orally served the Petitioner by telephone call, as follows,at Appendix H:2-3:

> " I called and spoke to Mr. Grushkin, acknowledging that he had not been properly served and not been given appropriate notice of the July 16, 1990 hearing. Mr. Grushkin and I agreed that the matter would be continued to the 15th of August, 1990, and that he would be there with his attorney. I advised him that the parties would be order-

ed to mediation at Family Court Services who would sort the matter out. Mr.Gruskin failed to appear (as per his agreement) on August 15, 1990 at 1:30 p.m. and the Court ordered me to mail notice to Mr. Grushkin of a continued hearing date... on August 29,1990 I was directed to send Mr. Grushkin yet another letter indicating there was a screening appointment and that if he failed to appear the Court would issue an order for temporary change of custody... The last date was September 6, 1990, and again he failed to appear and the Court changed custody." Appendix H: 1: 28, 2: 1-21.

The issue presented is whether a state may revoke final judgments on a claim an attorney orally served a party by an alleged telephone call ?

IV.

THE LETTER NOTICE WITHOUT SPECIFYING ANY GROUNDS TO REVOKE THE FINAL JUDGMENT OFFENDS DUE PROCESS OF LAW

As the sixty second court transcript indicates, Appendix F, the court revoked the final judgment

after three years without notice and without a motion and on a claim the attorney mailed a letter to the Petitioner. " In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. " Appendix F: 2:5-7, and " This is the letter I sent in. .." The letter, in fact, merely claimed " re: notice of hearing. Please be advised the court has ordered you to appear for a screening at Department 17 at Santa Clara County Superior Court on September 6, 1990 at 8:45 a.m. Should you fail to appear, as you have on August 15 th and August 23rd, the Court will grant us a change of custody by default." Appendix H, Exhibit B.

The question presented, apart

from the fact this letter was actually mailed September 4, 1990 so that it could not be received in time for the 8:45 a.m. hearing on September 6, 1990, is whether this letter is sufficient under this court's rulings that even convicted prisoners who face parole loss can not be denied their right to parole without " written notice of the claimed violations," Morrissey v. Brewer, (1972) 408 U.S. 470, nor may a juvenile and his parent be denied each other's companionship and the child detained without notice sufficiently in advance of a scheduled court proceeding so that there is a reasonable opportunity to prepare and the notice must set forth " the alleged misconduct with particularity," In re: Gault,

(1966) 387 U.S. 33.

V.

THE FAILURE TO REQUIRE THE STATUTORY MOTION DENIED PETITIONER AND HIS DAUGHTER THE EQUAL PROTECTION OF STATE LAW

Although state law required a specific court form of Notice of Motion be used to modify a judgment which form has been approved by the State's Judicial Council, the judge and lawyer revoked the final judgment admitting it was never used. (4)

Said form requires that the moving party set forth with parti-

(4) Ca. Civil Code section 1003 states " An application for an order is a motion. " California Rules of Court, Family Law Rule 1225 (a) provides, " an application for ..an order against a party.... shall be in the form prescribed by rules ... 1285.10. California Rules of Court, Rule 1285.10, prescribes the written form for a Notice of Motion for Modification of a Judgment in Family Law.

cularity the facts in support of a change of a pre-existing court order, the orders requested and whether it is modifying a prior order or judgment, and if so, what judgment or order. Appendix I.

Was Petitioner and his daughter denied the equal protection of state law by the state court's refusal to void the ex parte order when the required motion for all other citizens was never used ?

Is this court's ruling in In re: Gault, (1966) 387 U.S. 31,34, that " Due Process does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet

and which required " the child and his parents be notified in writing of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of hearing to permit preparation," applicable to California state practices where no such writings are required prior to revocation of permanent and final custody judgments by state judges ?

VI.

WAS DUE PROCESS AND/ OR EQUAL PROTECTION OF STATE LAW DENIED BY MAILING A LETTER NOTICE TWENTY FOUR HOURS BEFORE HEARING

Civil Code section 1010 states " Notices must be writing, and the notice of the motion... must state when, and the grounds upon which it

will be made, and the papers, if any, upon which it is based..." As indicated in footnote 4, motions in family law must be on the prescribed written motion forms approved by the Judicial Council.

Ca. Civil Code section 1005, states ' when a written notice of motion is necessary, it must be given at least ten days before the time appointed for the hearing." Civil Code section 1005.5 provides." A motion upon all the grounds stated in the written nottice thereof is deemed to have been made and to be pending before the court for all purposes, upon the due service and filing of the notice of motion, but this shall not deprive a party of a hearing of the motion to which he is otherwise

entitled." Service of said notices of motions must be mailed at least fifteen days prior to a hearing if served by mail under Ca. Civil Code section 1013.

As Appendix B, exhibit C indicates, the attorney mailed his letter September 4,1990 when the hearing was 8:45 A.m. on September 6,1990. The letter the attorney gave to the judge was dated August 30,1990 and the attorney did not disclose it was not mailed until September 4,1990. " This is the letter I sent in.." Appendix F:2:9.

Is the holding of In re Gault supra, that notice must be given sufficiently in advance to prepare for the hearing violated by mail notice forty eight to twenty four hours before hearing ? Is the

equal protection of state law requiring 15 days notice if sent by mail violated by a court allowing an attorney to claim to have mailed a letter less than the required 15 days before the hearing ?

VII.

DOES DUE PROCESS OR EQUAL PROTECTION OF THE LAW REQUIRE COURT PROCEEDINGS BE REPORTED ?

The judge had court proceedings without a motion and a proof of any service on the Petitioner and without his presence on five different days- July 16, August 15, August 23, August 29, and September 6,1990. Appendix B:23-27.

However, she had none of the proceedings reported by her court reporter except September 6, 1990. Appendix F and Appendix B: 2, Footnote 2. On July 16 and August 29

the calendar shows " not reported." On August 23, the judge permitted the lawyer to " waive a reporter." There is no record with the judge on August 15. When state practice is that a judge must have all proceedings reported unless both parties waive it, and state law provides a citizen has the right to appeal Family Court orders, In re Marriage of Skelley (1976) 18 Cal. 3d. 365, is a citizen denied their rights to Petition for redress of grievances under the First Amendment by a state court's practices permitting the judge to prevent the right of appeal by refusing to have select cases reported ?

Where, as here, the citizen alleges that the black judge and the black lawyer revoked his final

judgment on behalf of an Hispanic parent, with no compliance with state law, and did so solely by reason of Petitioner's white race, issues addressed by this court in MacDonald v. Sante Fe Trail Transp. Co., 427 U.S. 282, is the judge's refusal to have the proceedings reported so that Petitioner has evidence in support of his equal protection claim, such an impediment to access to the appellate courts that the refusal to report his proceedings denies him equal protection of law under this Court's reasoning in Boddie v. Connecticut, 401 U.S. 371 ? (5)

(5) The Judge's Declaration said, "On ..August 19, 1990.. I received a..call from..(my former husband). He stated, " If you would stop giving your money to that white boy lawyer of yours, you would have money to take care of your children Dec., L. Cordell, Sept. 26, 1990. Cordell, supra.

VIII.

IS SAN JOSE'S " SCREENING " UNCONSTITUTIONAL FOR FORCING WAIVER OF CONSTITUTIONAL RIGHTS ?

The ex parte order revoking the final judgment of custody to Petitioner stated, " Should Petitioner wish to contest this order, the parties shall immediately participate in screening through Family Court Services on an emergency basis." Appendix E:4. " Screening " requires the Petitioner ignore the unconstitutional acts that occurred and now let a lay counselor make the court order. Appendix B:48-52. " Screening " provides, " The court will make temporary orders based on the screening counselor's recommendation when the parties do not agree." Appendix B: 51.

Similar schemes allowing a

lay counselor or a lawyer to make judicial orders were declared unconstitutional as an unlawful delegation of judicial power to a private person in Marriage of Matthews, 101 C.A. 3d. 816,817 and Reaves v. Superior Court, 99 Cal. Rptr. 156. The question is whether such unlawful delegation of judicial power to a lay person violates this court's holdings in Eubank v. Richmond 226 U.S. 137,143 and Seattle Trust Co. v. Roberge, 278 US 116 (1928) ? Appendix B: 52-53.

The concomitant forfeiture of Petitioner's right to see his child if he does not give up his right to a trial, a real judge, some kind of a hearing, a public courtroom, a court reporter, some kind of evi-

dence, some kind of rights to confrontation and cross-examination, and some kind of findings based on the prevailing law concerning not dislodging children from their homes without " some kind of facts and circumstances occurring subsequently (which) are of a kind to render it essential or expedient for the welfare of the child " to change custody, In re; marriage of Carney (1979) 24 C.3d. 725, 730, 157 C.R. 383, 598 P. 2d. 36, at p. 730, appears to be the same kind of prohibited trading off of constitutional rights declared unconstitutional in Frost, supra and Loving v. Verner 388 U.S.1 (1967).

IX.

ARE THE STATE LAWS UNCONSTITUTIONALLY IMPAIRING THE OBLIGATION OF CONTRACTS ?

The question presented is whether this court's holding in United States Trust Co. v. New Jersey, 431 U.S.1 (1977) that state laws that impair existing contracts are void under Article 1, section 10, when the impairment is substantial, when the state has no legitimate and significant public purpose and when the adjustment of the contracting parties' rights is not on reasonable conditions and of a character appropriate to a public purpose, apply to void a claim that the state may void this citizens' contract with his duly licensed lawyer, because she will not take an oath to a private volunteer just as this Father will not submit his parenting rights and his daughter's life to a lay person either.

X.

DO STATE PRACTICES OF REVOKING FATHER'S PERMANENT CUSTODY WITHOUT GROUNDS DENY FATHERS THE EQUAL PROTECTION OF THE LAW BY REASON OF SEX DISCRIMINATION

The sixty second transcript of the revocation leaves no doubt that the judge invidiously discriminated against the Petitioner and solely by reason of his Male sex as a custodial parent. Appendix F. No inquiry is made into fitness of the mother. No inquiry is made into the state standard requiring that only exigent circumstances justify a change of custody of a child. Carney, supra. No inquiry is made into the best interests of the child as required by state law. It is assumed that a child should be in a mother's custody and not in the father's, even when the mother

admits she has not seen her child for over four months and when she had already abducted and kidnapped her daughter. Appendix F. The judge just assumes a custodial father is unfit, and a mother fit.

Although state law provides that " in making an order for custody to either parent,.. the court shall not prefer a parent as custodian because of that parent's sex," Ca. Civil Code section 4600 (b)(1), the transcript of the cursory and perfunctory inquiry concerning the mother leads little doubt the judge is discriminating against the custodial father solely by reason of his sex. The question then is whether the sixty seconds of perfunctory, .rrelevant and inappropriate questioning by the judge

which is sex- biased such a " hearing appropriate to the nature of the case," as required by Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950), or was it evidence of a predetermined judgment to award maternal custody and revoke the permanent custody judgment to the father, because of " ancient canards about the role of women," " overbroad generalizations," sex stereotyping about nurturing capacities, where sex is to be an inaccurate proxy for the required hearing of best interests of a child, and where the judge is substituting gender in order to clear a calendar and avoid hearings. Appendix F.

CONCLUSION

The State of California is

turning law on its head. Vested rights are revoked with none, and then the right to any rights is conditioned on submission to any private person's arbitrary whim.

Petitioner respectfully requests this Court hear his Petition and declare state statutes, as applied, authorizing ex parte revocations of final judgments and ensuing demands he forfeit his right to a trial and judge in order to parent at all, be declared offensive to basics of " Due Process and Equal Protection of the Law."

RESPECTFULLY SUBMITTED,

JAY GRUSHKIN
Petitioner In Pro Per
1381 Franchere Place
Sunnyvale, Ca. 94087

408-739-1829

90-715

11-2

No.

Supreme Court, U.S.
FILED
NOV 2 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JAY GRUSHKIN,

Petitioner

vs.

SANTA CLARA SUPERIOR COURT

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JAY GRUSHKIN
Petitioner In Pro Per
1381 Franchere Place
Sunnyvale, Ca. 94087

408-739-1829

October 30,1990

4:53 PM

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ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

Six Appellate District, No. H007539

S017579

IN BANK

JAY GRUSHKIN, Petitioner

v.

SANTA CLARA COUNTY SUPERIOR COURT, Respondent

ROSIE GRUSHKIN, Real Party In Interest

Application for stay and petition for review DENIED.

LUCAS

Chief Justice

Appendix A

SUPREME COURT OF THE STATE OF CALIFORNIA

Jay Grushkin,	)	
	)	
Petitioner	)	Docket no.
	)	S017579
	)	Sixth Appellate
vs.	)	Dis. H007539
	)	Santa Clara
	)	Sup.Ct. Case
	)	nos. 607271 and
	)	607066
Santa Clara Superior Court	)	
	)	
Respondent	)	
	)	
vs.	)	
	)	
Rosie Jimenez (Grushkin),	)	
	)	
Real Party in Interest	)	
	)	

APPLICATION FOR EMERGENCY STAY AND EMERGENCY PETITION TO REVOKE NO MOTION/NO NOTICE ORDER

Hon. LaDoris Cordell, Order, Santa Clara Superior Court, September 6,1990

JAY GRUSHKIN
1381 Franchere Place
Sunnyvale, Ca., 94087
408-739-1829

Petitioner In Pro Per

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THE SUPREME COURT OF THE STATE

OF CALIFORNIA

Jay Grushkin, Petitioner vs. Santa Clara Superior Court Respondent vs. Rosie Jimenez (Grushkin), Real Party in Interest	Docket No. Sixth Appellate No.H007539 Santa Clara Sup. Ct. Case nos. 607271 and 607066

REQUEST FOR EMERGENCY STAY AND

PETITION FOR REVIEW

This is an application for an emergency Stay and emergency Petition, where the trial court has seriously endangered my daughter's life. (1) Jurisdiction is sought under Ca. Rules of Court, Rule 19

(1) and (3), due to a need for uniformity of decision and to settle highly significant constitutional issues, and where one of the two Justices who denied the Petition was disqualified for cause as herein described, such that there was a lack of concurrence of the required majority of qualified judges.

The trial court acted orally with no papers, no motion, no notice, and no hearing, and for an attorney who does not legally represent anyone. The transcript

---

(1) The order revoking the three year old permanent custody Judgment, which the lower court entered September 6,1990 without notice, motion, hearing, is at Exhibit D. The transcript is at Exhibit B. The order of the Court of Appeals denying the Emergency Petition filed the next day was entered September 14,1990. Exhibit A.

appears at Exhibit B ; Justice Manoukian's disqualification at 50.

It does appear herein that a black judge and a black lawyer did act outside the presence of the court to revoke a permanent Custody Judgment which has been in effect for three years so as to deprive a Caucasian custodial father of his civil rights to notice, motion, hearing, and his constitutional right to continue to parent his daughter, and did so for an Hispanic mother who was charged with abduction and kidnapping and denied all rights to any custody due to her mental instability and permitted under the Final Judgment to only supervised visitation. Said Final Judgment appears at Exhibit C.

Serious and statewide issues of sex and race discrimination are herewith tendered, as well as the revocation by the trial court of this Court's holdings in In re Marriage of Carney, (1979) 24 C.3d. 725, 730, 157 C.R. 383, 598 P. 2d. 36 and its instituting a policy of revoking permanent judgments on oral requests without motions or notice or hearings as well as not having proceedings reported. As herein described, four of the five alleged court appearances with no motion and no service on the Petitioner or his attorney of record, where this Judge and this lawyer did things knowing there was no motion and no service are " not reported." (2)

The constitutional issues

require a uniformity of decision-making by this Court in order for children's lives to not be irrationally abused by reason of sex and race discrimination.

FACTS

On August 24, 1987, after trial, a Final Judgment of Dissolution of Marriage was entered in which Petitioner Father was awarded " physical custody of Natassia with supervised visitation to respondent if any. " Real Party in Interest/ Mother had abducted and kidnapped one year old Natassia. She did so

(2) Judge Cordell's court proceedings on 7/16/90 were " not reported." Exhibit F. There is no record for 8/15/90 with the Judge. On 8/23/90 Judge Cordell permitted the lawyer with the other side not served and not present to enter " reporter waived." Exhibit H. Judge Cordell's proceedings on 8/29/90 were " not reported." Exhibit I. Of 5 (continued next page)

in violation of the court orders. She fled the state. She was found guilty of 18 counts of contempt. A bench warrant was issued for her arrest. The court referred the matter to the District attorney for criminal charges of abduction and kidnapping. Exhibit C.

One year later, Real Party in interest was apprehended on the

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(2) appearances of this lawyer without service and no motion on five different dates, Judge Cordell proceeded with no reporter, or waived it, or there is no record on 4 out of the 5 dates. (emphasis added). Exhibits F- I. The transcript of the only proceeding-the one revoking permanent custody without service, motion, hearing, evidence-indicates a serious and real danger to the community. Exhibit B. The judge revokes the permanent custody order to " get Mr. Grushkin's attention. " Exhibit B: 3: 4-8.

What are a citizen's due process rights when a Judge refuses to use

(continued next page)

warrant, surrendered, and briefly imprisoned, with Petitioner/ Father assisting in her release in an attempt to conclude the serious trauma to Natassia from the abduction/ kidnapping. Natassia has con-

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(2) (continued next page)
a court reporter so a record can be had ? This Court has an interest in such a right in order for it to assess whether one of its Court Officers has committed acts of fraud, deceit, and artifice, or if a judge has committed acts of judicial misconduct or is mentally unfit or mentally unbalanced.

Petitioner requests that this matter be referred to the Commission on Judicial Performance on an emergency basis. When a judge is acting orally, with no papers, motions, hearings, reporters, terrorizing citizens and children, a serious issue of competence is presented. Petitioner understands that many judges who have no knowledge or experience of Family law " crack " under the strain. The transcript of the only reported proceeding raises serious issues of mental, legal, and psychological competence of the judge to decide cases involving parents. Exhibit B.

tinuously resided with her custodial father and her grandparents and has been recovering from the trauma of " hiding out from the police " and living off the streets she sufferred with her unstable mother. Although permitted unlimited, but supervised visitation, Real Party in Interest/Mother has not exercised the same. She has seen her daughter only five times this year. She is still seriously mentally disturbed and has no job and no home. Exhibit B.

On September 6, 1990 Natassia's long-fought for recovery for the last two and one half years from the abduction and kidnapping and her progress in her stable home, with her father and grandparents, her friends, her brand new school

she had just started that day in her first day of first grade, was destroyed.

On the evening of September 6,1990, all gains were lost when the police re-terrified Natassia, by crashing into her safe home, grabbing her, flashing some order, and taking her away with her dangerous, mentally unstable mother. The only transcript shows the Judge seems to think nothing of destroying children's stabilities and revoking permanent judgments arbitrarily. Exhibit B.

It may take years of psychiatric treatment for Natassia to undo the trauma and horror of two abduction/kidnappings to her in three years when she is only five years old.

There was no motion, no notice,

no hearing, no lawful attorney. The no motion/ notice order was entered by the Honorable La Doris Cordell that day so as to " get Mr. Grushkin's attention." Exhibit B.

Petitioner Father filed an emergency application for a Stay and emergency Petition the next day with the Court of Appeals. Exhibit K. He filed a Supplement one business day later. Exhibit L. The Court of Appeals delayed seven days. Exhibit A. Two Justices denied the Stay and Petition September 14, 1990. One of the Justices - Manoukian- was disqualified. She is the trial judge's former fellow judge on the Santa Clara Family Court, and she is the judge who instituted the policies of no hearings and no judges in custody

matters in the Santa Clara Family Court and revoking the mandatory mediation state law in the County. This revocation of state law is called " Screening." As herein described, it has already been ruled unconstitutional and is. Refer pages 50-60.

Petitioner requests this Court void and vacate the no motion/notice order immediately and order the return of his daughter to her home, since an order without personal or subject matter jurisdiction is always void ab intitio. He requests the emergency stay issue barring the trial court from proceeding due to the serious sex and race discrimination issues presented herein.

Petitioner Father requests an

immediate order on this emergency stay request. If denied, he asks the Petition be immediately denied so that he can immediately proceed in the United States Federal District Court for an emergency T.R.O. under 42 U.S.C.A. s. 1983, on the obvious and uncontroverted basis that he has been denied, under color of state law, all of his Civil Rights as a United States citizen, by reason of his Caucasian race status as a custodial father, by a private combination and conspiracy of a black judge acting with a black lawyer who represents no one, to deprive his Caucasian child and himself of all rights, pursuant to a policy of said judge of discriminating against Caucasian custodial fathers and their Cauca-

sian children, by terrorizing then in the dark of the night and taking said Caucasian child from her Caucasian father and delivering her to her dark-skinned, Hispanic mother who is extremely erratic, and doing so as part of the official policy and practice of sex and race discrimination practiced by the Santa Clara Family Court, with midnight raids on innocent citizen's homes grabbing their children. The United States Supreme Court has just held that a state official's " random, unauthorized " violations of State law which violate United States Constitutional rights do state 1983 claims. Zimmerman v. Burch, (1990) 108 L. Ed. 2.100.

The policy of blatant sex and

race discrimination practiced by the Santa Clara Family Court is not unknown to this Court and is the basic evidence of knowledge by this Court for many years of the official policy of the Santa Clara Family Law to invidiously discriminate, by reason of sex and race or ethnicity, by denying to those in said suspect classes all rights to all law. (3)

Petitioner's case, compared with others, is simple. The Court never acquired any personal or

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(3) Magee, Andrade, Webber, Rhedrick, Lindsey, Murphy vs. Santa Superior Court, Ca. Supreme Court, Docket no. S003365, (1987), Petition denied with Justices Mosk and Arguelles voting to hear Petition of six fathers. When the Petition was denied, all six fathers- two black, three Caucasian, and one Hispanic- had all rights to custody revoked. The Hispanic father had given up already.
(continued next page)

subject matter jurisdiction to enter any enters. Its order is therefore obviously void and a Nullity. But this father requests even with an emergency stay and order revoking his void order, this Court, none-the-less now hear what should have been heard and decided in 1987.

In re: marriage of Carney (1979) 24 C.3d. 725, 730, 157 C.R. 383, 598 P. 2d. 36, has been revoked by

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_ (3) The following cases contain evidence of blatant sex and race discrimination by the trial court: no notice, no trials, no grounds, court attacks based on race or fatherhood, denial of trials, investigations, ex parte order after ex parte order: Jones case,(no.544475) Rhedrick (no. 629057); Krage (no. 504495), Webber (no. 590701), Magee,(no. 603128); Lindsay (no.62371) Sandhir case,(No. 528229); Serrano (no. 58366); Murphy (no. 593460). With more time, Petitioner can gather the case nos. of at least 100 more. Exhibit B.

the lower court. It is important this Court order it to comply with this Court's controlling law. Exhibit B.

INCORPORATION OF POINTS AND AUTHORITIES

The attached Memorandum of Points and Authorities in support of emergency stay is hereby incorporated by reference as if set forth herein in full.

RELIEF REQUESTED

Petitioner therefore brings this Petition to request this court a) issue an emergency stay order of the no motion order of September 6, 1990, b) issue an emergency " revoke " order, since the Judge and lawyer had no jurisdiction to issue any orders, Exhibit B, c) issue its Alternative Writ of Mandate and/or

Supersedeas to stay enforcement of any such order which may, once again, result in the abduction/ kidnapping of said child by mother, real party in interest, d) order the child immediately returned to her custodial father within 24 hours of the date of this Court's stay and order the attorney Richard Williams to do so, and for failure to do so, impose sanctions on attorney Richard Williams, jointly with Real Party in Interest, of $ 500,000 e) issue the requested stay of said order until return of the Writ and hearing on the same , f) issue its Writ of Mandate ordering the lower court to void and vacate its practices and procedures of issuing no motion orders changing children's homes and stability

without proper motion, service, notice and hearing, g) declare the sex discrimination practices of the lower court against fathers and especially custodial fathers of their children unconstitutional under the fifth and fourteenth amendments to the United States Constitution and order the lower court to henceforth cease and desist from such sex discrimination against fathers, h) issue a Writ of Prohibition and/ or of Mandate barring enforcement of said Ex Parte order, i) Declare the race discrimination practices herein practiced to be a denial of equal protection of the law to Caucasian citizens and Caucasian children and order the lower court to cease and desist from its policies and prac-

tices of race discrimination a-
gainst Caucasian fathers (and
parents) and their Caucasian
children, j) Take its own original
jurisdiction directly to disbar
Attorneys Richard Williams and Tara
Stein for multiple acts of fraud,
artifice, and deceit, k) make an
emergency referral to the Commis-
sion on Judicial Performance of
this matter for its proper and ap-
propriate emergency facilities
and l) award the Petitioner at-
torneys fees and costs as a private
" Attorney General " for enforce-
ment of important constitutional
rights of parents and children and
an abolition of the sex discrimina-
tion and race discrimination cur-
rently being practiced by the lower
court and its well-known abuses

against children and their rights to safety, security, peace, which abuses are well-documented against the lower court.

CONCLUSION

The Petitioner respectfully prays this Court will issue an emergency stay and order the return of his daughter to the only home she has ever had before her life is further endangered by the unconstitutional practices at issue.

RESPECTFULLY SUBMITTED,

Dated: September 19,1990

_____

JAY GRUSHKIN
Petitioner In Pro Per

VERIFICATION

I have read, prepared, and signed the above application for an

emergency stay order and emergency Petiiton to prevent my daughter's second kidnapping and abduction and disappearance in the last three years. It is based on my personal knowledge, information and belief, and is made under the penalties of perjury and executed this 19th day of September, 1990.

JAY GRUSHKIN
Petitioner In Pro Per

Appendix B-10c

SUPREME COURT OF THE STATE OF CALIFORNIA

Jay Grushkin, Petitioner vs. Santa Clara Superior Court Respondent vs. Rosie Jimenez (Grushkin), Real Party in Interest	Docket no. S017579 Sixth Appellate Dis. H007539 Santa Clara Sup.Ct. Case nos. 607271 and 607066

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY STAY

I.

THE ORDER IS VOID AS A DENIAL OF EQUAL PROTECTION OF THE LAW TO CUSTODIAL FATHERS BY REASON OF THEIR SEX

This is a textbook case of sex

discrimination. It may also be a textbook case of race discrimination. First, one must analyze what is the due process of law accorded by law to all citizens. Then, an analysis must be made whether the failure to provide this individual with what other citizens have as their legal due had a rational and reasonable basis within the police power of the state. If a rational and reasonable basis is found, was there a compelling interest of the state whereby this individual could be lawfully singled out for this difference in treatment. If sex discrimination is based on an intermediate test between a rational basis and a strict scrutiny test, Clark v. Jeter (1988) 108 S. Ct. 1910, was there a legitimate reason

for the difference in treatment, and is the reason not based on sex myths, gender myths, cultural myths and sex stereotyping ?

In classic sex discrimination, all one needs to do is reverse the actual sex nomenclature, and see sex discrimination has occurred. Would a Judge have revoked a three year old custody order, solely on the following, knowing of no motion and no service of any motion to change custody, if Mrs. Grushkin had had permanent custody and Mr. Grushkin was seeking to revoke it ?

" You have a home such that you can take care of the child ? "
...

" Where is the child now ? "

" The last time you saw the child was four months, five months ?

Appendix B-12a

" When was the last time you spoke with her ?

" How old is the child ? "

" The child is in school ?

" My concern is that if we change custody, if the child is enrolled in school, then there is a change in the school and that's going to be disruptive ."

" It would be really nice If Mrs. Grushkin would just show up so we can talk about this.

" I am concerned about disrupting the child's life. You haven't see her for four months and all of a sudden you are going to show up and take her. Four months is a long period of time for a five year old and I don't know how we are going to get Mrs. Gruskin's attention."

" I am going to change custody .... "

(Exhibit B: 2-3)

The answer is that, of course, if the sexes had been reversed, such a cursory fitness exam would never have occurred. The Court

might have tried to find the file and see there was no motion pending and no service on Mrs. Grushkin. This judge just assumes a mother is fit, whereas a father would have had to prove not only was he fit, but that the mother was unfit. Second, the judge views male- female relationships in terms of struggle. The struggle is for power. It is for domination. She is not concerned with the child's life at all. She is concerned with exerting power over a male. " I don't know how we are going to get Mr. Grushkin's attention; " " It would be really nice if Mr. Grushkin would just show up so we can talk about this." Would these words, knowing of no service and no motion, have been said had the

mother not shown up, although never served, when a father was seeking to change custody ? Of course not. Would a judge say, as the only reason to revoke custody, " I don't know how we are going to get Mrs. Grushkin's attention." No. Instead, she would say that a new motion would have to be filed and served with fifteen days' notice in advance, and then the mother would have been given every deference to her custodial status and solely by reason of sex. Exhibit B.

It is instructive that the judge never thinks of Father - Daughter bonding. She does not treat Mr. Grushkin as if he has any interest in the proceeding or as a human being. To this judge, the word, " father " does not exist.

" Father " to her means nothing. It is a non-word. Her only concern is to get attention from a male on her.

Sex discrimination is insidious and a norm in the Santa Clara Family Court. Ft. 3. Never before has a father also been denied the right to at least some form of a motion. Lack of a motion in this case relates to the race discrimination that occurred here-a black judge and a black lawyer deciding the Caucasian father did not deserve to have a motion first. Pages 39-40, Exhibit B. Sex discrimination is common in that fathers often have no notice. Refer Ft. 3, pg. 2 of Ex. E. The assumption is that fathers have no interest, so they don't deserve to have any notice.

Exhibit B, E-N. But race discrimination is when the black person doesn't even need a motion on a Caucasian person, as occurred herein. Ex. B.

In Denial of a Right to Veto Adoption, Caban v. Mohammed (1979) 441 U.S. 380, 99 S.Ct. 1760, 60 L. Ed. 2d.297, the court voided a state statute which allowed an unwed mother to veto an adoption while not allowing the father to do so, unless he could prove the " best interests of the child," and did so, not on the due process grounds set forth in Stanley v. Illinois (1972) 405 U.S. 645, 92 S. Ct. 1208, 1216, 31 L. Ed. 2d. 551, but on a denial of equal protection of the law based on a gender-based distinction. The Court did not do

as Brown v. Board of Education had done, i,e. establish that the myths of difference based on the suspect category, were myths only. It did not question the sex stereotyping or sex myths- mothers are " emotionally closer " to their infants, since they gave birth, unwed fathers don't care since to them it's " sex ", a need, and a not a creation of new life- but merely concluded that the statute " excludes some loving fathers from full participation in the decision whether their children will be adopted and, at the same time, enables some alienated mothers arbitrarily to cut off the parental rights of fathers." Unfortunately, even the conclusion was sexist and premised on myth. Fathers not par-

ticipating are " unloving," while a mother not participating is " alienated." The law's assumption that a physical growth in a woman's body creates some kind of emotional attachment that is somehow mystical is myth. A woman can view that growth as a tumor, as a cancer, that needs to be excised and removed as soon as possible. It is the mind's eye that forms the attachment, and not the body. Mystical experiences from birth are fantasy. Men's fantasies concerning their own attachments to their own mothers often have caused state laws that fly in the face of individual male and female experience and speak of what should be, rather than what is.

Equally repulsive is the myth a

father's interest is not natural to his being or sex, because his only concern is the act of physical desire in sex and not it's " by-product." This is the myth that men are frenzied animals seeking pleasure and women are holy 'Madonnnas' enduring the animal so as to accomplish the higher good - new life. For sex discrimination to be truly abolished, the sex myths have to be abolished, Those myths do not relate to gender. They relate to sex...the act of sex. Children are seen as the mother's desire, and the father's mistake. Whereas the act by which a child is created is seen as the father's physical need and the mother's sacrifice. What happens when reality steps in that women have sex for physical need

and not to have children and men have sex out of sacrifice so as to have children and not based on physical need ? Then children are the father's desire and the mother's mistake, and the natural custodial parent is the father, as occurred at the turn of the century, and not the mother.

The law's job is to question assumptions, not accept them blindly. Frontiero v. Richardson (1973) 411 U.S. 677 and Weinberger v.Wisenfeld (1964), make clear that assumptions based on needs and status based on ideas about male or female are just that-irrational assumptions. C.C. section 4600, et. seq, of the Family Law Act prohibits what occurred here -discrimination in custody rights by reason

solely of sex, sex myths, and sexual stereotyping. The transcript shows the Judge clearly discriminated based on sex. Exhibit B.

II.

THE ORDER IS VOID AS THERE WAS WAS NO MOTION

One of the basic maxims of jurisprudence is that " That which does not appear to exist is to be regarded as if it did not exist. " C.C. section 3530.

The Court file shows there was no motion. Thus, when Mr. Williams, as part of his obvious fraud,claimed September 6, 1990, to Judge Cordell, " In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear," he knew there was a basic problem. Exhibit B: 1: 4-5.

He had no motion.

As the Court of Appeals ' file shows, the claim of serving a proof of service and letter is true. Mr. Williams did mail a letter with a proof of service of the letter. Exhibit M. He just never had any motion or proof of service of any motion. The proof of service claiming the letter was sent with no motion asserts under penalty of perjury that the letter was sent August 30, 1990. The actual postmark on this envelope is SEPTEMBER 4, 1990, 24 hours before the fraudulent court appearance of Mr. Williams. Exhibit M.

Petitioner believes that, of course, this Court must disbar Mr. Williams for perjury and his multiple acts of fraud, deceit, and

artifice and do so directly through its original jurisdiction.

Santa Clara County Local Rule 17, Section A, Law and Motion, entitled " Time Requirements for Filing and Service," states the following :

> " Moving and responsive pleadings must be filed and served on the opposing party or attorney in accordance with CCP Section 1005."

C.C.P. section 1005 requires that all motions must in writing. The motion must be on pieces of paper. One must obviously be able to see the paper upon which the writing appears. Words must be on the pieces of paper. The pieces of paper upon which the writing of words appears must be filed with a Court. A Court must be able to see the pieces of paper. The transcript

shows that the judge did not see any pieces of paper. Exhibit B . It shows she did not look for any pieces of any paper. Exhibit B. It shows she did not care whether there were pieces of paper. Exhibit B. The file shows there was none.

III.

THE ORDER IS VOID FOR NO NOTICE

Assuming the Judge could entertain an oral motion without papers, notice must be given to the other side of an oral motion. C.C.P. section 1005. Assuming the local rules, state statutes, State Constitution, and United States Constitution does not require written motions to take life, liberty, and property, notice must still be given to the other side prior to entry of an order on said

oral motion. In Armstrong v. Manzo, (1965), 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d. 65, Texas law dispensed with the consent of a natural father to an adoption if he had not contributed substantially to the child, and,in such a case, the juvenile judge could consent. No notice was given to the father, and the mother's new husband was allowed to adopt the father's child without notice to the father. In the instant case, the judge, who blatantly believes fathers are non-existent and non- persons and do not exist, Ex. B, says " I am concerned about disrupting the child's life. You haven't see him (sic-her- the child) for four months and all of a sudden you are going to show up and take him.

Appendix B-19a

(sic-her- the child). Four months is a long period of time for a five year old and I don't know how we are going to get Mr. Grushkin's attention. " Then the lawyer says, " We would be willing to cooperate and go to mediation." So the judge says," I am going to change custody...." Exhibit B: 3.

The judge's attitude is, " You are here. You didn't give notice, so I'll get his attention and destroy his child's psychic stability and security as punishment. He's just a father, and just a Caucasian one, at that. You're here. He's not. So I will destroy his daughter's home. " Exhibit B. A more punitive, disturbing attitude of irrational and shoot-from-the hip abusiveness could hardly be

found in any transcript. Exhibit B. Implicit in the transcript is the same callous attitude that, ironically, men judges have been accused of having about children, yet no male judge in history ever acted so outrageously and in such a bigoted and biased manner. This judge treats children as a piece of furniture -to be kicked around and scarred at her will. To her, children have none of the rights so carefully worked out in Carney, supra. They have no rights to safety, to homes, to security or parents or friends or school or toys or clothes or rooms. It took her sixty seconds to revoke three years of a father's hard work to repair his daughter's mind. Exhibit B.

In Armstrong, supra, the court did not deal with the sex discrimination and race discrimination issues herein, but merely held that " the decree was void; the total failure to give any notice violated the ' most rudimentary demands of due process.' "

IV.

THE ORDER IS VOID AS THE MAY PRIOR MOTION HAD EXPIRED UNSERVED AND THE COURT MAY NOT ACT ON ORAL MOTION

When Petitioner father filed his emergency Petition, he had no papers except three- a letter dated August 30, 1990, a false and perjured proof of service of the letter dated August 31,1990, and the proof of the lawyer's perjury and fraud, the envelope with the actual postmark of September

4,1990 mailed 24 hours before hearing and not as claimed, five days prior thereto. Exhibit M.

Then he found that this lawyer in the court file had filed a motion back in May, 1990 which on page two has a blank proof of service, although the proof is signed. The contents of the proof are blank. Exhibit E, p.2. The hearing date on this motion was July 16,1990. Exhibit E, 1. But there was no proof of any service of this motion ever on anyone and now the attorney admits he never had it served. Exhibit E, page 2 and Exhibit N, page 1-2.

The lawyer instead commits perjury and claims that he called the father at some claimed time, although the court file shows he went

to court without any service or motion five times. Exhibits E- I. The lawyer admits he didn't serve his May motion, but claims in some unidentified phone call that the father allegedly agreed orally to a date. Which one of the five ? The Petitioner Father, of course, never did make any agreement on any date or waive lawful service. Exhibit N: 2 and Exhibit K.

Oral alleged waivers of written motions and notices are void as against public policy. Even oral notices to lawyers under local rules of court are void. O'Brien v. CSEH, (1983), 196 Cal. Rptr. 409, 148 Cal. App.3d 961.

Personal service is the only manner in which a court can acquire In Personam Jurisdiction. Pennoyer

v. Neff, (1877) 95 U.S. 714, 24 L. Ed. 564, C.C.P. section 415.20.

A motion is not pending with a court until it has been both filed and served. C.C.P. section 1005.5, " Making and pendency of motion," states the following:

> " A motion upon all the grounds stated in the written notice thereof is deemed to have been made and to be pending before the Court for all purposes, upon the due service and filing of the motion or the notice of motion, but this shall not deprive a party of a hearing of the motion to which he is otherwise entitled. "

In order to hide his obvious fraud, as the only transcript available shows that the lawyer did not ever claim to have or serve any motion, he just claimed he " continued so (he) could serve a proof of service and letter to Mr. Grushkin so he could appear." Ex B, 1:

4-9. The proof of service, he concealed from the court, was not of any motion, as he had no motion. Exhibit M. It was a false and perjuried proof of service of the LETTER ONLY, mailed to a business address 24 hours before the hearing. Exhibit M.

C.C.P. section 1005.5 makes clear that no motion is pending unless served. The United States and State Constitutions do not allow oral serves. Amend 5, 14, US Con.

Santa Clara Family Court Rules, Rule 17, Section A, " Law and Motion," states under 3. " Proof of Service," that " if a responding party fails to appear at a hearing, the moving party must immediately submit proof of timely service to the Court; Otherwise, the matter

will be taken off calendar. (emphasis added). "

On July 16,1990 the court lost all jurisdiction of the May motion as it was never served. Exhibit M-2. The attorney admits he had never served. Exhibit N 1-2. The Court was then under a mandatory and ministerial duty to follow its own rules of practice. When the attorney could not produce any written proof of any service, it was required to take the July 16 motion off the calendar. It apparently either did not or allowed the attorney to continue to appear on an oral motion or the judge made up her own oral motion, which is what appears to have occurred, and is unheard of in any court of law. Exhibits B, F-I.

On July 16,1990 the " not reported " calendar shows " cont(inued) 8-15-90," yet it could not be continued as the court had lost jurisdiction due to no service of the motion. Ex. E, page 2, Ex. F.

On 8/15/90 the " calendar shows the event is " Motion/ CC (Child Custody),fees v. C/F 7-16-90." " C/F " appears to mean " continued from. " Attorney Tara Stein is claimed to be appearing for Richard D. Williams. The notation from the calendar states, " Cont(inued)-sent to calendar. Parties ordered to mediation. Pet(itioner) to fill out papers for mediation by 9/1/90. Ex. G. The calender shows this was done by a lawyer. Ex. G-1 and G-2. The alleged order appointing this lawyer to sit as a Judge Pro Tem

pore is signed by Rosie Grushkin as the attorney for Jay Grushkin. Exhibit G-2.

Now inexperienced and incompetent lawyers sit as judges to let opposing parties sign and waive rights for the opposing party and have lay people sign in and waive rights claiming they are the attorney for their opponent ! This shows the Santa Clara Family Court is so mismanaged that an incompetent lawyer, who can not distinguish between a lawyer and a party, can let a party appear for their opponent. Ex. G-2. Now, the real attorney of record for Mrs. Grushkin, Tara Stein, signs in with Rosie Grushkin to waive all their opponent's rights. This was a deliberate fraud by Ms. Stein, for

which she should be disbarred, so that such constant frauds by lawyers are stopped in San Jose. Ms. Stein had to know that she and her client could not sign both places for both the Plaintiff and the Respondent, when they represented just their side. She also had to know that no lawyer can sit without both parties' consent. She committed two deliberate frauds on Mr. Grushkin and the court for which she should be disbarred under Rule 7-105 : Letting her client sign as attorney for the other side and not telling the court that she had no motion, no service, and the lawyer could not proceed as a judge pro tempore due to no consent from the other side. Ex. G-1 and Ex. G-

2.

A note should be made that the trial court is so mismanaged that, although the Control file is that of Mr. Grushkin's, case no. 607271 and clearly marked as such, Exhibit C, so that the companion has nothing in it, Mr. Williams kept filing and proceeding on the Dummy file, case no. 607066, as did the court. Ex.C, Ex. M, Exhibit G-2. This case has more than one Dummy in it.

Since Mr. Grushkin and his lawyer never appeared and consented to anything, this inexperienced lawyer, Sandra Cully, who never bothered to figure who was a party and who was a lawyer and is so incompetent she could not even figure out there was no motion pending, makes an order on a non-existent motion when no one con-

sented to let this lawyer act as a judge ! Exhibit G.

This 8/15/90 alleged, but void order of this inexperienced and obviously not competent lawyer, Sandra Cully, has stamped on it its approval by Judge Nichols, yet this Judge had to know that Rosie Grushkin was not a lawyer and could not sign as a lawyer for her former husband. Ex. G-2. Why did a judge let a lay person sign in as the lawyer for the other side ? Exhibit G-2.

This happens again on 8/23/90. The lawyer, Sandra Cully, once again, still totally unfamiliar with any law, allows herself to be appointed as a Judge Pro Tempore. Now she does not do it on Rosie Grushkin's falsified claim that she

is the attorney for Jay Grushkin, but lets it be done with no claim to any appearance by any one on the other side. This is approved By Judge Cordell. Exhibit H-1 and H-2. Now a reporter is allowed to be waived by Mr. Williams by Judge Cordell, and new void orders are made with no motion and no service for supposedly screening, which is unconstitutional as herein described. And the judge's note says she is going to have a bench warrant issued if " Dad " is not present at " screening." Ex. H-1 and H-2. All along Judge Cordell never reads the file to see there is no motion and no service. Exhibit M, p.2, and Ex. H-2. It is clear Judge Cordell believes in terror tactics against Caucasian

fathers, not law. Exhibit H-2.

These are blatant terror tactics of a black judge conspiring with a black lawyer against a Caucasian citizen and his Caucasian child. Exhibit B.

Then six days later, on August 29,1990, Mr. Williams has now been successful in perpetrating nine frauds. On July 16,1990 he defrauded the court into continuing a motion with no jurisdiction and no service. Exhibits M-2, F. On August 15, 1990, he has a lawyer defrauded into being a Judge Pro Tempore by his having his client sign in for Jay Grushkin and as his lawyer, no less. Exhibit G-2. On August 23, 1990, he once again defrauds a lawyer into being a judge pro tempore. Exhibit H-1. And on August

23,1990, he defrauds or conspires with Judge Cordell- all of the proceedings are " not reported" except the last one with Judge Cordell, Exhibit B- to let him " waive a reporter. " Exhibit H-2. He then conspires to have her enter a void order, with no motion and no service, on August 23, 1990, to arrest the father if he does not show up " screening." Exhibit H-2.

With so many frauds and collusions successfully practiced by Mr. Williams, he then on August 29, 1990, once again " not reported, " with no motion and no service, has Judge Cordell enter an order for him to go to the calendar and get a new date and send notice to the father. It appears that Judge Cordell is then conspiring to not

permit the Caucasian father to have any motion. Exhibit H-2. It appears from the September 6, 1990 transcript at Exhibit B: 1: 1-7, her idea of " notice " is for Mr. Williams to claim he sent a letter 24 hours previously with no motion to the Father and no service on his attorney of record. Exhibit M-3.

It thus appears on September 6, 1990 when this judge revoked custody, she knew there was no motion and no service, knew she had no jurisdiction to enter any orders, and because she is black and the lawyer is black, she is going to discriminate against the Caucasian father and take his Caucasian child from him in an act of racism and sex discrimination. Exhibit B.

No one could have a case in

front of them on July 16, August 15, August 23, August 29, and September 6- five times- and not know that there was no motion and no service, unless they had a prior and a fixed determination to discriminate against the Caucasian father for a black lawyer. Exhibits E-I, Exhibit B.

Judge Cordell could not waive the Father's rights to a written motion. C.C.P. section 1005. She could not waive his rights to 15 days notice. C.C.P. section 1005, as obviously occurred. And the judge was not empowered to waive Mr. Grushkin's rights to lawful service of process. C.C.P. section 4809. And she could not proceed on her or the attorney's oral motion. C.C.P. section 1005.

Thus, on 9/6/90, the only reported appearance, the judge is apparently acting on her own oral motion or the oral motion of Mr. Williams, when she says and does the following, Exhibit B:

> " You made an offer of proof with regard to the situation with the children " (Ex. B: 1: 1-18)

Yet the entire transcript shows no offer of proof. When and where did the judge and the lawyer make an offer of proof ? In the hallway ? It certainly is not in the only transcript available. Exhibit B.

Then the judge asked Mr. Williams to reiterate what he is asking for, since there obviously are no papers. Thereafter, the judge, obviously knowing there are no papers, makes her own inquiry about what the mother wants, and performs

the attorney's role instead of acting as the neutral judge. The judge obviously knows the mother has not seen her daughter for four or five months. Ex.B.

So, on her own oral motion, and her own perfunctory 8 questions- You have a home ? Where is the child now ? The last time you saw the child was four months ago, five months ? The last time you talked with the child ? When is the last time you spoke with her ? How old is the child ? The child is in school ? - Natassia's home and stability are destroyed and her parent denied all rights to any procedural or substantive due process of law. Exhibit B: 2-3.

Since the Court and the lawyer agree that they are proceeding with

no motion and no lawful notice, this deprived father of his United States Constitutional rights to such, prior to an order revoking his 1987 permanent custody judgement. The lack thereof voids the September 6, 1990 order and all proceedings and orders from July 16, 1990 on. Exhibit B. Attorneys Richard Williams and Tara Stein should be disbarred by direct investigation and review by this Court for multiple acts of fraud under Rule 7-105. This should be done to start the clean up of this same well-known fraud and corruption in San Jose in the Family Court. Judge Cordell should be removed from the bench on five counts of judicial misconduct of proceeding to discriminate and deny

to a Caucasian citizen his right to be heard in accordance with Canon 3. And Sandra Cully should be prohibited from ever serving as a Judge Pro Tempore in any Court.

Summary process is unconstitutional. Groppi v. Leslie (1972) 404 U.S. 96, 92 S. Ct. 582, 30 L. Ed. 2d. 632. The power of the state is subject to the restrictions imposed by the Federal Constitution. McKnett v. St. Louis and S.F.R. Co., 292 U.S. 230, 78 l. Ed. 1227, 54 S. Ct. 690, rehearing denied in 292 U.S. 613, 78 L. Ed. 1472. The taking of liberty without notice is unconstitutional. Goss v. Lopez, 419 U.S. 565, 42 L. Ed. 2d. 725, 95 S. Ct.729: Fuentes v. Shevin, 407 U.S. 67, 32 L. Ed. 2d. 556, 92 S. Ct. 1983, 10 UCCRS 913, re den 409

US 902, 34 L. Ed 2d. 165.

Proceedings which deny wholly notice or hearing, or provide inadequate methods are lacking in due process. Morgan v. United States, supra; Ohio Bell. Tel. Co. v. Public Utilities Comm. (1939) 301 U.S. 292, 57 S. Ct. 724, 728, 81 1. Ed.1093, 1099: Kwock Jan Fat v. White (1920) 253 U.S. 454, 40 S. Ct. 566, 64 L. Ed. 1010: Kwong Hai Chew v. Colding (1953) 344 U.S. 590, 73 S. Ct. 472, 97 L. Ed. 576. When an interested party is not given notice, the proceedings are void. Armstrong, supra.

V.

THE ORDER IS VOID AS NOTICE WAS REQUIRED TO BE GIVEN TO THE ATTORNEY OF RECORD

The Santa Clara Superior Court, Local Rule 17, Section A, Law and

Motion, entitled " Time Requirements for Filing and Service, states, " All parties shall comply with the provisions of CC section 4809, requiring service upon a party after entry of a judgment of dissolution."

After a Final Judgment of Dissolution of Marriage, a party must serve and file on both the attorney of record and the party directly any post-dissolution judgment motions. This is because the court loses jurisdiction once a permanent and final judgment is entered, and the attorney of record no longer has any general authority to represent the client. C.C.P. section 4809 and Marriage of Gortner (1976) 60 C.A. 3d. 996.

Since the court obviously never

read the file, she did not know the law or the facts. It is clear from the September 6, 1990 transcript, she is treating her oral motion as if it were a one day temporary order (4) before the entry of a final

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_ (4) The Santa Clara Family Court reguarly whips out one day temporary custody orders. The police come and grab the children and give them to one parent. The next day a party is told to hire one of the local bar pols with favors and influence with a particular judge. The bar pol then goes to his particular other judge and not the one who issued the order the day before. That second judge revokes the order and makes a new order returning the children to the original parent. Then the police come that night and grab the children and take them back to the other. The next day, the other party goes back in to his judge and may or may not get another order revoking the second judge's order and have the children picked up again. For cases of what's called " San Jose's ping-pong kids," see In re: marriage of Lindsey, (No. 62371) (custody changed three times in three days),and In re: marriage of Jones case, (no. 544475) (custody changed 3 or 4 times in four months.)

judgment, instead of her oral motion to revoke a permanent custody order entered as part of the three year old Final Judgment of Dissolution of Marriage. After a final judgment of dissolution of marriage, both the attorney of record and to the party are required to be served and in writing. Petitioner's Attorney of record, Attorney Betsey Warren Lebbos, was never given any notice, oral, written or by telepathic communication, as appears to be most of the communications that went on, by either the attorney or the Judge in defiance of both state and United States Constitutional law.

It is clear Judge Cordell wants this Petitioner to waive her fraud and judicial misconduct and the

fraud of the lawyer and play ping-pong with his child's life and waive his and his daughter's United States Constitutional rights. Exhibit B. Both the judge and the lawyer agreed they ignored the need for any notice on the attorney of record, such that their order is void. Exhibit B.

VI.

NOTICE TO THE PETITIONER'S ATTORNEY OF RECORD WAS CONSTITUTIONALLY REQUIRED

The United States Constitution states, " No state shall pass any law impairing the obligation of contracts. US Consti, Article 1, Section 10. Petitioner has had a continuous contract of employment since 1987 with his attorney of record, Attorney Betsey Warren Lebbos, who won custody of his

daughter in 1987. Exhibit C. That contract subsumes the law in existence at the time of its making. Fletcher v. Peck, (1810) 10 U.S. Cranch, 3 L.Ed. 1 ; Wood v. Lovitt, 61 S.Ct.983. That law then and now is that, under the United States Constitution, an attorney is obligated to perform their contracts of employment unless their own admitting and licensing court revokes those contracts by issuing a judgment revoking or suspending the license it issued which forms a part of the public's contracts with their lawyers. Ex Parte Robinson (1873) 19 Wall. 513, Ex Parte Wall 107 U.S. 265, 2 Sup. Ct. 569, 27 L.Ed. 552, Ex Parte Garland, (1867) 19 Wall. 513, Cummins v. Missouri (1867) 9 71 U.S. (4 Wall)

277. Third party meddlers don't count.

That license is part of Petitioner's contract with his own lawyer. It is not revoked, suspended or impaired. Thus, the claim that this Petitioner can be denied constitutional due process of law by no notice to his attorney of record on a spurious claim that the state law, Ca. Busn. and Prof. Code sections 6086.5, 6007 (c), and state bar internal rules, which seek to change Article 6, sections 1 and 9 of the California Constitution, without this Petitioner's vote as a citizen, so that Petitioner's lawyer and his contract is aborted ex parte by some non-lawyer farmer sitting in his porch in Roseville claiming he is

some kind of " judge " of some kind of private court run by a private trade group, are laws impairing the obligations of this Petitioner's contract with his duly licensed lawyer as well as laws destroying his right to vote as a United States citizen, and unlawfully delegating this citizen's public power to a handful of private persons. Cox v. Louisiana 379 US 536, 13 L Ed 2d 471, 85 S. Ct. 453; Hadley v. Junior College District 397 U.S. 50 (1970), Avery v. Midland County, 390 U.S. 474 (1968), Baker v. Carr, 369 U.S. 186, 226 (1967).

This Petitioner did not contract with this farmer and never voted to let this farmer sit on the State Supreme Court and license his

lawyer and never voted for him to be a Judge of any of his courts either, rights assurred to this Petitioner as a citizen and a voter both under the California and United States Constitutions. Art. 6, sections 1 and 9 and 16, Art. 2, section 8, Art. 3, sections 3 and 3.5, Ca. Consti; Avery, supra, and Hadley, supra.

This Petitioner and voter did not vote to allow judicial duties to be performed by those he did not vote to perform them, nor did he vote to abolish his right to separation of powers and agree the Legislature would do the Judiciary's job, as separation of powers belongs to this citizen as his right and does not belong to the Judiciary. Sweezy v. New Hampshire,

354 U.S. 234, 1 L. Ed. 2d. 1311.

So the trade group can claim all they want Petitioner's lawyer was ex parte made an inactive member of their trade group. Her contract with this citizen has no provision in it for trade groups. The only thing in their contract is her license, and she has hers. And that license doesn't have anything in it about trade groups. This trade group is just third party meddlers, as was held unconstitutional in Trustees of Dartmouth College v. Woodward (1819) 17 US 518, 4 L.Ed.629. Since there is no police power in farmers licensing lawyers, or in that matter letting legislators do so, Petitioner's pre-existing contract has priority

and is valid and controlling and can not be altered by a farmer. Allied Structural Steel Co. v. Spannous, (1978) 438 U.S. 234, 98 S. Ct. 2716, 57 L.Ed. 2d. 727, U.S. Trust Co. of New York v. New Jersey, (1977) 431 U.S. 18.

VII.

THE ORDER IS VOID AS THE ATTORNEY WAS NOT A LAWFUL ATTORNEY OF RECORD

Ca. Business and Professions Code section 6106 makes it a disbarable offense for an attorney corruptly or willfully and without authority to appear as attorney for a party to an action or proceeding. Rule of Professional Conduct 7-105 makes it a disbarable offense to practice any fraud, deceit, or artifice on the court. Judicial Code of Conduct, Canon 3, entitled,

," A Judge Should Perform the Duties of his Office Impartially and Diligently," provides under section A. (4) concerning " Adjudicative Responsibilites," A Judge should accord to every person legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding..."

Canon C." Disqualification,"(1) provides a judge should disqualify herself in a proceeding in which his disqualification is required by law, or his impartiality might reasonably be questioned,including but not limited to instances where.. he

has a personal bias or prejudice concerning a party....

Petitioner's Supplement to his Emergency Petition stated how Mr. Williams was not authorized to appear for any party. Exhibit L. As such, the court either lacked jurisdiction to entertain his motion and/or abused its discretion in recognizing an attorney who could not be recognized, and/or committed a serious error of law on at least five unauthorized appearances, at p. 1 :

> " A review of the record reveals that the attorney who obtained the ex parte order without notice or hearing, Richard Williams, is not the attorney of record for the Real Party in Interest...The attorney of record is Tara Diann Stein, Esq., 261 W. Main Avenue, Morgan Hill, Ca. 95037. Mr. Williams defrauded.... (Exhibit L)

However, he does not contest the fact that he was not the attorney of record for any party in the Santa Clara Superior Court when he filed his motion claiming to be such or when he appeared on his or the court's oral motion claiming to represent a party. Exhibits L,N.

Attorney Tara Stein of Morgan Hill was, in fact, the attorney of record, for Rosie Jiminez Grushkin and not this Mr. Wiiliams in a separate office and business in San Jose. Exhibit L:1.

Mr. Williams has admitted that he failed to obtain a substitution of attorneys from said lawful attorney of record, (to this day he has failed to obtain any right to appear and has failed to obtain the same, and is still not attorney

of record in the superior court for any party), and that he failed to notify the opposing party and counsel and court of any such change of lawful attorney of record, and that he had no lawful authority to file any papers claiming to be such an attorney for anyone. Exhibits L and N.

Witkin, Cal. Procedure, volume 1," Attorneys, s.86, p, 105, makes clear that neither the Honorable LaDoris Cordell nor the lawyer, Sandra Cullen, were authorized to recognize Mr. Williams or his motion and could enter no orders on his claimed papers, as follows :

" The newly appointed attorney will not be recognized by the courts, and his acts will be ineffective, (emphasis added) unless he is substituted as attorney of record or unless the opposing party, by deal-

ing with him as an attorney, waives the failure to substitute. (See McMunn v. Lehrke (1915) 29 C.A. 298, 307,155 P.473."

Since no asserted waiver is claimed, the order is void as entered by and for an unauthorized attorney. Petitioner requests that Mr. Williams be disbarred by and through the original process and rule of this Court for deliberately violating the Rules of Professional Conduct and Business and Professions Code s.6106.

As stated in Witkin, Cal. Procedure, s. 87, p.106, " Attorneys," ... C.C.P. section 284 provides that substitution (of attorneys) may be made in either of two ways :

(a) By consent if both client and attorney, filed with the

clerk, or entered upon the minutes.(See 1 C.E.B., Civ. Proc. Before Trial s. 1.49, et. seq.1.51 (form of substitution); C.E.B., Civl. Lit. Forms s. 3.2, 2 Am.Jur. P.P. Forms (Rev. ed.), Attorneys at Law, Form 91 et. seq.)

(b) By noticed motion or application of either client or attorney, followed by order of the court (See 1 C.E.B., Civ. Proc. Before Trial s. 1.49, 1.52, 1.53 et. seq. [forms]; C.E.B., Civ. Lit. Forms s. 3.3 et seq.; 2 Am Jur. P.P. Forms (Rev.ed.), Attorneys at law, Form 61 et.seq. "

" Where substitution is effected by consent or order under C.C.P. 284 (supra s. 87), notice thereof must be given to the adverse party, and " until then he must recognize the former attorney. " (C.C.P. s. 285; see 1 C.E.B. Civ. Proc. Before Trial s. 1. 46, 1.49 et. seq; C. E.B. Civ. Lit. Forms s. 3.2 et. seq.; Sherman v. Panno (1954) 129

C.A. 2d.375, 378, 277 P.2d. 80.

. ..." Witkin, Cal.Procedure,

" Attorneys, volume 1, s. 88, "

Notice of Substitution."

Petitioner submits that since he was under no obligation to recognize Mr. Williams at any point in time absent a notice of substitution of attorneys or an order of the court, and the Court was under a mandatory and ministerial, non-discretionary duty to follow the law prohibiting recognition of Mr. Williams or his oral claims since he was not the lawful attorney of record, that the ensuing no motion order entered at Mr. Williams' request is void and a nullity due to his fraud. As herein described, Mr. Williams' actions were a continuous fraud over five unauthor-

ized court appearances, both on the court, opposing counsel and the opposing party and warrant his disbarment for fraud under Rules 7-103 and 7-105.

VIII.

THE COURT ERRED AS ALLEGED PARTIES' AGREEMENTS IN FAMILY LAW ARE NOT ENFORCEABLE AS A MATTER OF LAW

Mr. Williams' motion in May had as the sole ground for a change of custody an alleged agreement of the parties two years old, which was never executed by their mutual lawyers or entered or implemented. No one knows what the oral motion alleged. Exhibit E.

In Family Law, agreements entered into between the parties without the knowledge and consent of their attorneys are, as a matter of pub-

lic policy, ignored and not enforced. Mr. Williams' admits his unserved motion he filed without being the attorney for anyone was not based on the statutory standard of the " best interest " of Natassia being for her to have unsupervised access to her daughter, but solely based on a claim to an alleged agreement of the parties. Exhibit E. The alleged agreement, which was never executed, and was torn up in one hour, was two and one half years old. " He claims that the Petitioner, in failing to attach these alleged " agreements," was concealing from the court that Rosie Gruskin did not try to steal the child but had moved within Santa Clara County during a period in which Mr. Grushkin was

not actively visiting the child. "
Ex. N, p. 2: 27-28, 3: 1-3.

In sum, while Mr. Williams is claiming his alleged client had lawful custody while she " had moved within Santa Clara County " and the father was not " actively visiting the child, " the truth was that the mother was a fugitive from Justice, had fled the state to avoid criminal prosecution, had committed 18 counts of contempt of court, was no longer the custodial parent but a fugitive from Justice, and the father could not actively visit his child, because Rosie Jimenez had kidnapped her, even though he had exclusive custody ! Exhibit C. Not once since her criminal apprehension and imprisonment has she ever had any

any custody. Exhibit C. The daughter has lived exclusively with the father since March of 1988. Thus, while Mr. Williams claims that Petitioner was not "actively visiting the child, " in March, 1988, Petitioner had and has had continuously exclusive custody of the child since that date, and the child has continuously resided exclusively in his home with the mother only allowed supervised visits. Exhibit C.

Suffice it to say that, any alleged agreement of the parties entered into after Ms.Jiminez had abducted and kidnapped her daughter, was arrested and imprisoned, made under the extreme duress of Ms. Jiminez that, once out, she would once again kidnap and abduct

her daughter and the Petitioner would never catch her or see his daughter again, given the backdrop of the extreme abuse and sex discrimination known to exist in the Santa Clara Family Court, Exhibit K and footnote 3, whereby Petitioner, for one hour only in 1988, was so beset with himself, that he was willing to allow the Respondent to have his daughter, just so he could see her at all, and try to prevent what he saw as just further abuse by a court against him and his daughter, is entitled to no credit in the law. Exhibit K, " Procedural History."

The principle was well-stated in In re: marriage of Wickander, 187 Cal.App.3d. 1364; 232 Cal. Rptr. 621 [Dec 1986], which was

concurred in by Justice Eagleson, while sitting in the Second District Court of Appeals, Division five, as follows, p. 1367:

> " While there is an attorney of record, no stipulation as to the conduct or disposal of the action should be entertained by the Court unless the same is signed or assented to by such attorney ... " Magee v. Superior Court (1973) 34 Cal. App. 3d. 201, 213 [109 Cal. Rptr. 758] ....(cites omitted)."

Just as Mr. Williams fraudulently telephoned the Petitioner,knowing he represented no one, and did so in deliberate violation of his duties to not communicate with a party represented by counsel, as required by Rule of Professional Conduct 7-103, and thereafter fraudulently submitted an alleged agreement not signed or executed by then attorneys of record for eith-

er party, knowing the same was, in fact, torn up in one hour and never implemented, now he asks his multiple frauds and deceits and violations of the Rules of Professional Conduct be condoned, so that he can continue to perpetuate his frauds on the courts, the parties, and innocent children. Exhibits E-J, M.

In In re: Marriage of Maricle, 220 Cal. App. 3d. 55;(May, 1990), the Second District Court of Appeal, confirmed the well-known principle as follows, at p. 58 :

" Moreover, even if section 4800 were not applicable, as a matter of policy, where a party is represented by an attorney of record, the court should not accept a stipulation or agreement made without the knowledge and consent of the attorney. In re Wickander (1986) 187 Cal. App.3d. 1346, 1367, 232 Cal. Rptr. 6211. Of course, a party

may wish to ratify an agreement even after being advised by his or her attorney not to do so. Where the court is satisfied that the decision is knowingly and intelligently made, it may accept the agreement without the attorney's consent. Here, however, there was no such ratification. The court erred by accepting the agreement."

IX.

THE ORDER IS VOID AS IN VIOLATION OF THE CARNEY RULE

The court clarified what is required for a change of a custody order, and which especially applies to this permanent and final custody order entered as part of the Final Judgment of Dissolution, as follows in the leading case in our state of In re Marriage of Carney, (1979) 24 C. 3d. 725, 730, 157 C.R. 383, 598 P. 2d. 36, at p.730, as follows:

" [To] justify ordering a change of custody there must generally be a persuasive showing of changed circumstances af-

fecting the child.... And that change must be substantial : a child will not be removed from the prior custody of one parrent and given to the other unless the material facts and circumstances occurring subsequently are of a kind to render it essential or expedient for the welfare of the child.' ... The reasons for the rule are clear :

' It is well established that the courts are reluctant to order a change of custody and will not do so except for imperative reasons; that it is desireable that there be an end to litigation and undesireable to change the child's established mode of living.' "

In Speelman v. Superior Court (1983) 152 C.A. 3d. 125, 128, 130, 199 C.R. 784, the mother claimed that Carney was not applicable as the father had only had custody for nine months, whereas in Carney, supra, it was five years. The court reiterated that dislodging a child from their stability is radical and

disfavored, no matter what the time involved, unless there is an affirm ative change of circumstances, as follows:

" We agree that the situation here is different from that present in Carney. But the difference is only one of degree. In each, the mother agreed to physical custody by the father and later sought to renege upon that agreement. It is no more appropriate to change custody because of a quick change of heart than because of one taking place five years later unless the change of heart is accompanied by a change of circumstances. The period of the father's custody is significant only in determining whether the changed circumstances are important enough to justify dislodging the children from their current environments. It cannot be used as an excuse to permit a change of custody without changed conditions."

In the instant case, the sole grounds for a change of custody in the May motion, after three years

was the mother's statement saying I want it. Ex. E.

As the September 6, 1990 transcript makes clear, the judge asked eight unimportant questions, and none of the analysis of Carney is either known by her or ever applied, requiring her order to be voided. Exhibit B.

X.

THE ORDER IS VOID AS A DENIAL OF EQUAL PROTECTION OF THE LAW AS DISCRIMINATION BY A BLACK JUDGE AND BLACK LAWYER FOR A HISPANIC MOTHER AGAINST A CAUCASIAN FATHER

Reverse race discrimination is as much a reality as race discrimination. Although it is clear that no one can tell when the conversations between this judge and this lawyer took place, and their content, the name of " Grushkin " leads little doubt the custodial

father is Caucasian, while the mother having the docket changed so that her name is " Jiminez " on it would leave little doubt she is Hispanic. Exhibits E-I.

Was it changed to her maiden name there, but not in the court file, by the lawyer solely for him to play into the judge's race and ethnic prejudices against Caucasians ? Exhibits E- I. The mother's very dark skin would leave little doubt that she has Indian blood. In this case, the judge keeps referring to " We." Exhibit B. Who is the " We ? " It is clear that with Ms. Jiminez's dark skin, as a Mexican Indian, and her black lawyer, the Judge's " We " means," We, black folks against this no good White," who is supposedly ignoring

" Us." The transcript leads little doubt this judge not only has had ex parte communications with the lawyer in violation of the Judicial Code, but she has overidentified herself with them as black people supposedly being ignored by a Caucasian person. She denies all rights to the father because he is Caucasian and supposedly ignoring us black people. Her speech and her talk is racist- " We " against " him " attitude. Her extreme abusiveness and denial of all rights to the father is to " Get Mr. Grushkin's attention." Why ? Because he is Caucasian and supposedly not paying attention. Exhibit B. When Caucasians are treated differently from blacks, that is race discrimination.

McDonald v. Santa Fe Trail Trans. Co. (1976) 427 U.S. 273, 96 S.Ct. 2574, 49 L. Ed. 2d. 493, St. Francis College v. AlKhazraji (1987) 481 U.S.107 S.Ct. 2022, 95 L. Ed. 2d.582.

Would she commit every error of law known in a custody case to occur if the absent parent was a black father ? Would she let a Caucasian lawyer commit frauds and give him an order ? Is her discrimination racist or sexist or both ? Clearly she is discrimina-ating in favor of the black male lawyer against the father's Caucasian female lawyer as the Caucasian female lawyer gets no notice at all, while the judge has obviously met with the black lawyer many times without notice. Exhibits

B, E-I.But then is that race discrimination or sex discrimination or both ? She is clearly practicing sex discrimination against the father as the transcript treats him as non-existent and unimportant and entitled to not one due process right. Exhibit B. But is it both ? Sex and race discrimination ? Exhibits B, E-I.

XI.

THE ONLY REMEDY FOR FRAUD IS VOIDNESS AND THE SCREENING PROCEDURES IN SANTA CLARA ARE UNCONSTITUTIONAL

The black lawyer readily admitted his fraud in obtaining an order without any legal notice on the father. Exhibit N. He excuses his fraud with a false claim that the father orally agreed to appear based on an unidentified and un-

identified and undated claimed telephone call. Does he now claim that rather than the one telephone call he claims to have had, that instead he had five for each day he kept going over to the court without the father's knowledge ? Exhibit N and Exhibits E-I. How many times can he commit perjury and get away with it ? Exhibit B. He also claims that the mother gave the father papers. However, the mother never did. It is doubtful that she would, at Mr. Williams disbarment proceedings, testify to such an obvious lie. Mr. Williams, in fact, committed perjury when he claimed that the mother gave the father any papers. He had none for her to give the father. It is clear that Mr.Williams' claims are perjury, just as

his claims were to the lower court. In all events, any alleged serve by a party is void. Sullivan v. Sullivan,(1967) 64 Cal.Rptr. 82, 256 C.A. 2d. 301, Coolidge v. New Hampshire, 403 U,S, 443, 441.

Mr. Williams' claim is that, " Well, I'm a fraud-But the court knew I was a fraud. They accept my frauds. So- I was not her lawyer in fact. So, I did not give any notice to the attorney- five times. So I did not give any notice to the party- five times. So what if I perjuried the proof on the letter. So what, if I had no motion. So what, if I had no grounds. But, since I completed my frauds with the court's complete approval of my frauds-five times, they should not be set aside since successful

frauds between me and a judge are always rewarded. I'm a black person and I am entitled. A black judge approved my frauds and she is entitled. All the father has to do is go to screening. " Exhibits N and E- I. The totality of Mr. Williams's claims is that he did defraud, but he is entitled to defraud. Exhibits N, E-1. He committed over fifteen separate acts of fraud. Since these frauds are everyday occurrences in the Santa Clara Family Court, and not once has one of these fraudulent lawyers been disbarred, sanctioned, fined, banned from the Family Court, or subject to anything except rewards for their frauds, the frauds escalate. Exhibits B, E - I.

Since the court has no juris-

diction over the father presently as they never acquired any, he can not be ordered to go anywhere by that court. As soon as his daughter is returned, with a " revoke " order by this court, Petitioner is moving out of the Santa Clara County to a County that follows the law.

Orders entered without notice are void. They are a Nullity. It is as if they never existed. They have to be revoked in their entirety as Summary process is unconstitutional. Groppi v. Leslie (1972) 404 U.S. 496, 92 S. Ct. 582, 30 L. Ed. 2d. 632, Mullane v. Central Hanover Bank and Trust Co. (1950), 339 US 306, 94 L.Ed. 865, 873, 70 S. Ct., Goss v. Lopez, 419 U.S. 565, 42 L.Ed.2d.725, 95 S. Ct.729:

Fuentes v. Shevin, 407 U.S. 67, 32 L. Ed. 2d.556, 92 S. Ct. 1983, 10 UCCRS 913, re den 409 US 902, 34 L.Ed. 2d. 165; Morgan v. United States, supra; Ohio Bell. Tel. Co. v. Public Utilities Comm. (1939) 301 U.S. 292, 57 S. Ct. 724, 728, 81 L. Ed. 1093, 1099: Kwock Jan Fat v. White (1920) 253 U.S. 454, 40 S. Ct. 566, 64 L. Ed.1010: Kwong Hai Chew v. Colding (1953) 344 U.S. 590, 73 S.Ct. 472, 97 L. Ed. 576.

A. SAN JOSE'S SCREENING PROCESS IS UNCONSTITUTIONAL

Both the judge and Mr. Williams believe they can, through threats and coercion and fraud, force a United States citizen to forfeit one constitutional right in order to have another-the right to notice, trial, an impartial judge are

United States Constitutional rights to which the Petitioner was and is entitled before his daughter's welfare can be taken from him, as he is the permanent custodial parent. Merrill, " Unconstitutional Conditions, " 77 U.Pa. L. Rev. 879 (1929); Hale, " Unconstitutional Conditions and Constitutional Rights, 35 Colum. L. Rev. 321 (1935), Tribe, American Constitutional Law (1978),p. 248. The United States Supreme Court's decision in Frost and Frost Trusting Co. v. Railroad Commissioner, 271 U.S.583, 594, 46 S.Ct. 605, 70 L.Ed.1101, 1105 (1926) is applicable to void the attempt of the lower court to not only force the forfeiture of all his rights which have occurred, but also its attempt

to claim he must now forfeit all of the rest of his rights by going to unconstitutional processes known as" Screening."

The Judge believes she can force unconstitutional jurisdiction upon herself through acts of fraud on the citizen. Exhibit B. Now Mr. Williams' claims that Mr.Grushkin should forfeit not only all his procedural and substantive parenting rights, but that he must acquiese in said forced forfeitures in order to ever see his daughter and be her parent. Exhibit N. His suggestion that " all Mr. Grushkin has to do is go to screening " means he has to submit to further unconstitutional acts by that court in order to parent at all as well as waive the violation of his Civil

Rights caused by the fraud and improprieties of this Judge and lawyer. Exhibits E-I.

Screening is an unconstitutional revocation of rights to the mandatory mediation state law, hearings, rights to a judge, rights to contract, and rights to a fair and impartial judge, as a condition of the constitutional right to parent, as herein described.

a. UNCONSTITUTIONAL REVOCATION OF MANDATORY MEDIATION LAW

Justice Manoukian, who is one of the two Justices who denied the Petition, put into effect as Presiding Judge of the Santa Clara Family Court a means to revoke the state's mandatory mediation law in the County. It is called " Screening. "

C.C. 4607 was passed to implement from the prior year the first Joint Custody law. It was intended to facilitate parties' co-parenting and to have them agree, with a trained mediator's guidance, on how to structure their Parent- Parent Dyad and rid themselves of their Husband-Wife Dyad. This statute provides that mediation is to be provided by the Court and that it is mandatory prior to or at time of the hearing on any contested proceeding. It is also to be confidential. Instead, what Justice Manoukian did to prevent parents' having the use and benefits of the mandatory mediation law was revoke it in the County and pass mandatory " Screening," where no mediator exists and a counselor just makes

her own custody order. This eliminates mediation, hearings, trials, witnesses, experts, courtrooms, judges, notice, discovery, evidence, findings, rulings, and all due process of law. It is also a purposefully sex discriminating mechanism to deny fathers their parenting rights. Whereas state law moves toward reconciliation of conflict, San Jose, which is the only County to abolish the mandatory mediation state law, moves the parties into an immediate war to convince a lay person to give them custody.

Said " Screening " provides as follows, Santa Clara Family Court Rules, p. C-8 :

" EMERGENCY SCREENING REFERRAL PROCEDURES"

Appendix B-51a

On ... you must report to (court department)

1. Once all parents and their attorneys are present, you ask the Court Clerk or Deputy for an Emergency Screening Referral Form.....

2. (Take it to) the Family Court Services....

7. Most cases are settled by screening. Agreements between the parties will become a temporary order. THE COURT WILL MAKE TEMPORARY ORDERS BASED ON THE SCREENING COUNSELOR'S RECOMMENDATION WHEN THE PARTIES DO NOT AGREE. (Emphasis added)

8. The fee for an Emergency Screening of 30 minutes to two hours is $ 100..... (4)

Note, the screening is an order of the court. It is, in fact, in excess of the court's jurisdiction. The citizen is forced to forfeit their right to any hearing- " THE COURT WILL MAKE TEMPORARY ORDERS BASED ON THE SCREENING COUNSELOR'S RECOMMENDATION WHEN

THE PARTIES DO NOT AGREE. (Emphasis added)." This obviously means there is no hearing at all. The citizen is forced to allow a lay person to sit as their "judge," and forfeits their rights to a judge or anyone with any legal training-THE COURT WILL MAKE TEMPORARY ORDERS BASED ON THE SCREENING COUNSELOR'S RECOMMENDATION WHEN THE PARTIES DO NOT AGREE. (Emphasis added), And there are no rights to witnesses, experts, discovery, evidence, cross-examination or confrontation if a person goes to screening. Thus, the citizen aware of his rights has to refuse to go in order to preserve his constitutional due process rights at all. Screening is intended to force forfeiture of all

rights. No other County has " screening," nor has any other county abolished the mandatory mediation law, trial, hearings, judges, and all due process rights of its citizens in custodial matters.

b. UNCONSTITUTIONAL DELEGATION OF JUDICIAL POWER TO A PRIVATE PERSON

Since " Screening " specifically states that the court will make its order based on the recommended order of the lay counselor, the Santa Clara judges have obviously unlawfully delegated their judicial duties to a lay person, in violation of the United States Constitution's due process doctrine. This was already declared unconstitutional in Marriage of Matthews, 101 C.A.3d. 816, 817. Santa Clara's

" Screening " is also unconstitutional under Reaves v. Superior Court, 99 Cal.Rptr.156.

c. DENIAL OF FREEDOM TO CONTRACT

Part of the due process liberties for citizens are their liberies to contract with those of their own choice. Amendment V. Amendment XIV, US Consti.; see also corollary in Article I, sec. 10. " Screening " forces a United States citizen to hire and pay and contract in servitude with a lay person of the court's exclusive choice in order to exercise their constitutional right to parent. Thus, they must forfeit their constitutional right to contract in order to have their constitutional right to parent. A state may not trade off constitutional rights and

and force citizens to forfeit one in order to have another, which screening does on seven different levels of constitutional rights required to be forfeited in order to exercise the constitutional right to parent one's own child. This is unconstitutional, and Petitioner requests this court void as such the Santa Clara County's " Screening " process and order it to comply with the state's mandatory mediation law instead. Committee to Defend Reproductive Rights v. Myers, (1981) 19 C.3d. 252, 274, 172 Ca. R. 866, 625 P.2d.779.

CONCLUSION

An order entered with no motion is obviously void. An order entered with no notice is void. An order entered without notice to a party

when required, is void. An order entered without notice to the attorney is void. An order entered with no fifteen days' notice is void. An order entered for an attorney not authorized to represent anyone is void. An order premised on a lawyer sitting as an alleged judge without consent of a party is void. An order based on an alleged letter is void. An order based on race is void. An order based on sex is void. An order based on fraud, which is extrinsic, is void. An order based on 24 hour mail notice of a letter is void. Unless this Court wants a continuation of these obvious frauds and judicial misconduct, very prevalent in San Jose, it should not countenance what occurred here

with no law at all.

Children's lives and safety are not a " grab-bag" where raw possession is all of the law, instead of nine-tenths of it. It is no remedy to say that a court can commit multiple frauds to keep a Caucasian father out of Court, then force the victim of its frauds and judicial misconduct to go to the expense, time, trouble, with an already known biased court, to set aside obvious multiple frauds, when time is of the essence and the alternative is even more unconstitutional than what occurred. Petitioner's daughter is in immediate and extreme danger from a second abduction and kidnapping and a totally unstable mother. Race discrimination may have occurred to

blacks, but that does not entitle them to seek revenge against Caucasian children who can not fend for themselves. Petitioner's daughter has her right to her stable and secure home. That stable and secure home is with her permanent custodial father and has been for the last two and one half years and will be for the next fiteen as her mother is far too unstable and erratic.

Wherefore, Petitioner respectfully requests that this Court issue an emergency stay and void order concerning the September 6, 1990 order at once, order the immediate return of Petitioner's daughter to her home so she can start to heal at once, and then take jurisdiction to disbar Mr.

Williams and Ms. Stein, instead of the State Bar that is part of the frauds in San Jose (5) and take jurisdiction over the Petition to void the unconstitutional no motion, no notice, no judge practices of the trial Court, and declare its " screening " practices unconstitutional. Petitioner requests this Court help to save other children's lives by ordering the trial court to cease and desist its obvious race and sex discrimination practices against innocent children and their parents, which are so injurious to our society and proper race and sex relations.

RESPECTFULLY SUBMITTED,

Dated : September 19, 1990

JAY GRUSHKIN
Petitioner In Pro Per

COURT OF APPEAL OF THE STATE OF CALIFORNIA

In and for the

SIXTH APPELLATE DISTRICT

JAY GRUSHKIN, No. HØ07539

Petitioner,

vs.

SANTA CLARA COUNTY SUPERIOR COURT,

Respondent,

ROSIE GRUSHKIN,

Real Party in Interest,

Superior Court No. 607271

BY THE COURT

The petition for writ of mandate and request for stay are denied.

(Agliano, P.J., and Bamattre-Manoukaian, J., participated in this decision.)

Dated SEP 14 1990

AGLIANO, P.J.

Appendix C

COURT OF APPEALS FOR THE SIXTH
APPELLATE DISTRICT COURT
STATE OF CALIFORNIA

Jay Grushkin, Petitioner	Docket no. H007539 Santa Clara Sup. Ct. Case nos.607271 and 607066
vs.	
Santa Clara Superior Court Respondent	
vs.	
Rosie Grushkin, Real Party in Interest	

APPLICATION FOR EMERGENCY STAY
DUE TO EXTREME KIDNAPPING
RISK DUE TO PRIOR KIDNAPPING
AND FLIGHT AND CRIMINAL
APPREHENSION AND EMERGENCY
PETITION FOR WRIT OF MANDATE/
CERTIORARI AND/ OR SUPERSEDEAS

Hon. LaDoris Cordell, Ex Parte
Order, Santa Clara Superior
Court, September 6,1990

JAY GRUSHKIN
1381 Franchere Place
Sunnyvale, Ca., 94087
408-739-1829

Petitioner In Pro Per

Appendix D-1

COURT OF APPEALS FOR THE SIXTH
APPELLATE DISTRICT COURT
STATE OF CALIFORNIA

Jay Grushkin, Petitioner	)	
vs.	)	Docket no. Santa Clara Sup. Ct. Case nos. 607271 and 607066
Santa Clara Superior Court, Respondent	)	
vs.	)	
Rosie Grushkin, Real Party in Interest	)	

REQUEST FOR EMERGENCY STAY AND PETITION FOR WRIT OF MANDATE

Introduction

This emergency request for an emergency stay is because the lower court has seriously endangered my daughter's life. There is no remedy

at law as the lower court is disqualified, and there is no plain, speedy, and available remedy to prevent the immediate second kidnapping and abduction and out-of-state flight of the real party in interest of my daughter, which kidnapping and abduction by her for a year and her subsequent apprehension, arrest, and criminal imprisonment was well-documented in the Court file.

Petitioner requests an emergency stay order of an unconstitutional and void order issued sometime yesterday without service, notice, hearing, or grounds and based on the lower court's policy and practices of ex parte sex discrimination against men and especially custodial fathers, which order was

entered yesterday ex parte. It resulted in the police taking the Petitioner's daughter, Natassia, age 5 from her stable home and delivering her from her exclusive custodial father to the real party in interest, her mother, who was criminally arrested, imprisoned, and charged with kidnapping and abduction of said child, disappeared and fled the state with said child for almost a year, was cited for 18 counts of contempt, and was ordered never to have any access to her daughter,except supervised visitation. Exhibits A and B.

The order of no custody to mother and no visitation except supervised entered three years ago is because the mother poses an extreme danger to her daughter, has

no lawful address, is seriously emotionally disturbed, is homeless, a vagrant, and did abduct and kidnap my daughter and flee out of state for over a year until apprehended and imprisoned on said charges, and poses an extreme abduction/ kidnapping/ and flight risk. Exhibit A.

My seriously traumatized daughter just now was beginning to come out of the serious trauma of " hiding out " from the police for over a year. All of the security and stability I, and my parents, have given Natassia in the last two and one half years will be totally lost and my daughter will be so emotionally retraumatized by the acts of ex parte abuse and obvious sex discrimination of the lower

court, there will be no way to save her little mind and heart.

RELIEF REQUESTED

Petitioner therefore brings this Petition to request this court a) issue an emergency stay order of the Ex Parte order of September 6,1990, b) issue its Alternative Writ of Mandate and/or Supersedeas to stay enforcement of any such order which may, once again, result in the abduction/ kidnapping of said child by mother, real party in interest, b) order the child immediately returned to her custodial father within 24 hours of the date of this Court's stay and for failure to do so, impose sanctions on her attorney of record, Richard Williams, jointly with Real Party in Interest, of

$ 500,000 b) issue the requested stay of said order until return of the Writ and hearing on the same , c) issue its Writ of Mandate ordering the lower court to void and vacate its practices and procedures of issuing Ex Parte orders changing children's homes and stability without proper service, notice and hearing, d) declare the sex discrimination practices of the lower court against fathers and especially custodial fathers of their children unconstitutional under the fifth and fourteenth amendments to the United States Constitution and order the lower court to henceforth cease and desist from such sex discrimination against fathers, e) issue a Writ of Prohibition and/ or

of Mandate barring enforcement of said Ex Parte order, f) award the Petitioner attorneys fees and costs as a private " Attorney General " for enforcement of important constitutional rights of parents and children and an abolition of the sex discrimination and well-known abuses against children and their rights to safety, security, peace, which abuses are well-documented against the lower court.

NO NOTICE

The present ex parte order was issued with no notice or service or hearing or grounds. No notice was served on the Petitioner as required by C.C.P. section 4809 and Marriage of Gortner (1976) 60 C.A. 3d. 996.

Both service and notice were required to be given fifteen days in advance of a hearing to both the Petitioner Party and his attorney of record under C.C.P. section 4089, which states as follows :

> " After the entry of a Final Judgment decreeing the disssolution of the marriage, no modification of such Judgment, order, or Decree and no subsequent Order in such proceeding shall be valid unless any prior Notice otherwise required to be given to a party to the proceeding be served in such manner as such notice otherwise permitted by law to be served upon the party himself."

The child was taken the evening of September 8, 1990 by the police, based on the Ex Parte order issued hours earlier. Pursuant to O'Brien v. CSEH, (1983), 196 Cal. Rptr. 409, 148 Cal.App.3d 961, said ex parte order is void under both the

United States and the State Constitution.

The lower court entered the present order, knowing of no service of process on the Petitioner and his attorney of record. However, the Court could not have ignored the extreme danger to which it would subject the child by allowing any unsupervised access by the mother, as the history of the criminal abduction and kidnapping by the mother for over a year, her arrest, and imprisonment is in the Court file. She was, in fact, apprehended on a bench warrant from said court. She was, in fact, arraigned in said court. She was, in fact, imprisoned by said court. The lower court obviously never bothered to read anything, just

whipped out an order out of hatred against custodial fathers and against men.

It is clear that the Court did not even bother reading any part of the Court file to determine if service had ever been made, and the extremely serious situation of danger she would be placing the child in by allowing the Real Party any unsupervised access at all to her child, due to the abduction/ kidnapping/ imprisonment and psychiatric record of the mother and the real Flight risk.

This is a perfect example of the serious sex discrimination practiced against fathers by the lower court where children's lives are meaningless. The lower Court has now seriously endangered my

daughter's life.

PROCEDURAL HISTORY

1. On July 14, 1986 real party in interest filed a Petition for Dissolution of marriage from the Petitioner in the Respondent Court case no. 607066. On July 17, 1986 Petitioner filed his Petition for Dissolution of marriage in the Respondent Court, case no. 607271.

2. Petitioner filed for joint legal and physical custody of their minor child, Natassia Tahara, date of birth April 4, 1985. Real party in interest sought joint legal and exclusive physical custody.

3. In March 24, 1986, real party in interest disappeared for five days with the one year old child with no one apprised of her whereabouts. On July 13, 1986 she once again disa-

peared with the infant for another week with no advices as to her whereabouts. Refer OSC, case no. 607271, filed July 17, 1986.

4. On July 17, 1986 the Honorable Richard Turrone issued an emergency order for the parties to participate in mediation and for each party to apprise the other of the address location of the child.

5. On August 7, 1989 the two filings were consolidated, and the control designated as that of Petitioner, case no. 607271, with future filings ordered to be made under case no. 607271. By stipulation, Both parties were ordered to participate in mediation set for August 14,1986 with real party in interest to have weekends with the infant, the remainder with the

father, and both parents to keep each other advised of any change of address of the child and to inform each other of a telephone number where the child can be reached. Findings and Order after Hearing filed August 15, 1986.

6. On October 29, 1986 father filed a Motion for Joint legal and physical custody indicating that mediation had failed, that the mother, the real party in interest herein, had refused to allow him to visit with his daughter except in her presence, and requesting a screening with Family Court Services for an interim visitation schedule.

7. On December 15, 1986, the date scheduled for hearing, the parties

stipulated father could see his daughter Thursdays from 3:30 p.m. to 6:00 P.M. and Sundays from 11:00 a.m. to 1:30 P.m., and each to keep the other advised of the current address and phone number of the child. Findings and Order after hearing, December 22, 1986.

8. Petitioner filed an At Issue Memorandum on April 6, 1987.

9. On April 13, 1987 an Order of the Court pursuant to a custody/ evaluation report awarded both parents joint legal custody with Natassia continuing to live primarily with her mother with an access schedule established for father and a clause that " neither parent will travel with Natassia over 100 miles from San Jose without the other parent's con-

sent." The access schedule was limited to 5 hours a week. This is because of the policy and practices of the Respondent Court in discriminating against fathers in violation of both state law and United States constitutional provisions prohibiting sex discrimination in the rendition of state-sponsored services and in parenting rights.

10. On April 16, 1987 he filed an Order to Show Cause requesting emergency and permanent stay-away orders indicating that the real party in interest had come to his office, started to verbally abuse him, push things off his desk, cause a big mess in his office, and threatened to kill him, and that he feared for his life.

11. On May 1, 1987 a trial date of

August 24, 1987 was set with a settlement conference set for August 17, 1989. On or about June 1, 1987 real party in interest fled the state and disappeared with the minor child and advised her counsel he was not to represent her.

12. On August 17, 1987 real party in interest advised the Court his client was unlocateable. Sanctions were reserved.

13. On August 21, 1987 Petitioner modified his settlement conference to request exclusive legal and physical custody due to the real party in interest's threats and bizarre behavior in abducting and kidnapping their child and disappearing out-of-state.

14. On August 24, 1987 real party in interest's attorney was

permitted to withdraw. The Court attempted to prevent the Petitioner being finally allowed a trial on his custody rights by trying to take the trial off-calendar. He vehemently protested this sex discrimination against him as a father. Finally, the Court was forced to proceed with the scheduled trial to which he was entitled. After a full trial with witnesses and testimony, the Court ordered full custody of Natassia to the Petitioner/ Father with supervised visitation for the mother. The Court found real party in interest in contempt of court on 18 counts of contempt, with a bench warrant issued with $ 1,000 bail, and sentencing reserved. Petitioner was directed to file abduction/

kidnapping charges with the D.A. against real party in interest. Sanctions of $ 2,000 for failure to appear at the settlement conference and trial were imposed on real party in interest with $ 1,000 payable to Petitioner and $ 1,000 to his counsel. Exhibit A.

15. The Dissolution of marriage was entered September 21, 1987.

16. Six months later, the real party in interest was apprehended on the bench warrant, arrested and placed in jail. Natassia was turned over to her father pursuant to the Court's custody order. See April 11, 1987 Minute Order. The Petitioner, in an effort to amicably settle the matter, not wanting his daughter to suffer because her mother was jailed,

agreed with the real party to allow her physical custody as long as they had " joint custody," with his having all summmer with Natassia, and occasional visits throughout the year, agreed for the bench warrant to be revoked and withdrew the criminal charges, and did so as long as there was an " absolute guarantee that the visiting rights be strictly adhered to and that Natassia will not ' disappear again.' " Exhibits B and C.

17. This agreement of the parties in March, 1988 was never sought to be made a court order nor was it implemented as it became clear immediately that the real party in interest would not comply with her co-parenting responsibilities. As such, custody was never changed nor

was the agreement ever treated as valid by either party.

18. As such, Natassia's home for the last two and one-half years has been exclusively that of her father and her paternal grandparents. Real party in interest has been an occasional visitor, has been allowed unlimited access to her daughter, but almost constantly fails to appear at the appointed time and dates, and since May,1990 has seen her daughter only twice.

19. From a period of extreme instability in the ages of 1-2, for the period of ages 2-5, Natassia has now been in an extremely stable and loving home with a full-time young grandmother at home to care for her and with a father who dotes on her and is teaching her respon-

sibility and with a grandfather who adores her. Both her grandfather and her father, as his partner, own several stores, and Natassia is learning there is value in work and not being on welfare. She has friends, interests, activities, her material and emotional wants fully satisfied. She no longer is forced to live a peripatetic life style with a mother who lives on welfare, has no lawful address, is homeless, and moves from place to place, and state to state with impunity. It would be extremely traumatic to once again change Natassia's home and disturb her personality development in a stable and responsible path of feeling very secure in those around her being there for her and loving and caring for her

deeply. Since her personality is fully formed by the age of six, and thereafter unalterable, any change now will disturb her path of having an out-going, open, and friendly disposition and being able to receive and give love without fear that if she does, that parent or person will go away. First, she felt her father left her, and then, with her mother's imprisonment, she felt her mother left her For the last two and one half years, she has had both parents, although her mother has chosen not to see her as frequently as she could and should. Natassia has had not only both her parents, but she has also had both paternal grandparents there for her daily. Children suffer from what is called

" Magical thinking," where they believe that they cause, through their badness, a parent to go away, and the real party in interest will either thwart access by father, or once again, kidnap Natassia and flee out of state.

Natassia will suffer within three short years, three excruciatingly traumatic losses of parent, for which she will blame herself and feel worthless and act out.

20. Although an attorney called months ago indicating his interest in representing the real party in interest, I have never been served with any papers and have never heard from this lawyer again.

21. Pursuant to the attached, my attorney of record, who was required to be served, was never

served either.

22. On September 6, 1990, when I arrived at one of the stores, in the afternoon, someone handed me a letter postmarked September 4, 1990 (Exhibit C), claiming that I was supposed to be in Court that morning, September 6, 1990 at 8.45 A.M. Although the letter is dated August 30,1990, the envelope from the attorney, Richard Williams, was, in fact, not postmarked until September 4 and was sent to a business address where I do not work regularly.

23. In sum, the lawyer practiced an obvious fraud. My daughter and I are his victims. But she is only five years old and should not have to suffer the well-known fraud of an obviously fraudulent lawyer and

bigoted and incompetent judge.

The lawyer intended that I have no notice of any hearing, and I had none. (emphasis added)

23. Since I travel through several stores weekly in different cities, no one is authorized to send me personal mail at any of them. The stores are my business addresses only, but only for each store's business. My residence address is well-known and is listed in the telephone book under the only Grushkin in Suunyvale- Martin and Doris. I have lived there almost thirty five years, except for the brief marriage. The real party in interest has known of my address and has come there or called me there over 20 times in the last 6 years. I received no mail at all

ever from anyone about this matter at my residence address.

Although I last spoke with the real party in interest Monday, September 3,1990, when she came to my home, she never mentioned anything about any court hearing.

It is obvious that the attorney, Richard D. Williams, did defraud me on purpose. It is difficult to conceive that an attorney who knows that his client is psychiatrically disturbed, that she is homeless, that she is unemployed, that she is a vagrant, that she was cited, arrested and imprisoned for abduction and kidnapping and cited on 18 counts of contempt of court, would so blithely defraud both a court and a child and deliberately,

on purpose, seriously endanger a child's life.

The lawyer made sure that he was not going to mail the August 30, 1990 letter until he was sure I would never get it before Court, so he could have my daughter abducted and subject to another kidnapping and out-of -state flight. He never called me, either at home or at any of the stores in all this time. He mailed the letter, not August 30, 1990 as the letter claims, but September 4,1990 as the envelope shows. And he sent it to a store knowing that I would not be there and that, in all events, I would never get it the next day, September 5, 1990, so that I could appear in Court 8:45 A.M. September 6, 1990.

23. It is clear the Judge abused both her discretion and committed eight serious errors of law which void her ex parte act. There was no service on the party. There was no service on the attorney. If the attorney had filed prior papers, and defrauded the court by claiming to serve anyone, the court had no jurisdiction to continue the matter to other dates as there was no personal or subject matter jurisdiction over anyone. In all events, nothing could be heard without fifteen days notice to both the party and attorney. And notice can not be sent AFTER THE HEARING. The court erred in that it conducted no hearing or inquiry. The Court erred in that it never looked at the file. The Court erred in that

it failed to apply the " best interest of the child " required standard. The Court erred in that no modification of a permanent custody order excluding a parent is ever permissible without the required attention to and hearing conducted on a change of circumstances from those that existed when the order was made mandating the exclusive custody order by the Court. The Court erred in that excluding a father completely who is the exclusive custodial parent and has been for three years is blatant sex discrimination and bigotry and hatred against men by a biased judge.

The Court erred in that her obvious bigotry and bias and hatred of men disqalifies her for cause for

hearing any custody cases of children. The Court erred in that she can not condition a constitutional parenting right to continue to raise one's child on submission to unconstitutional conditions. Her claim that the Petitioner will never see his daughter again unless he goes to her designee, the Family Court Services, for " screening," is unconstitutional as no citizen can be required to forego their right to hire their own experts and be forced to forego a trial prior to deprivation of their constitutional right to raise their own child.

24. Once the stay and writ issue, so that Natassia is safely returned home, and the proper service and notice is given to both him and his

counsel with the required fifteen day notice, he shall file to remove the judge for cause and proceed to trial, which is his constitutional right to due process of law. No " screening " can ever occur when there is no emergency and when it is intended to deny and deprive a litigant of his right to a trial, since the Santa Clara Family Court, unlike all other courts in history, now has rules that they abolished trials and the judge automatically just rubberstamps anything the non-professionals who practice rabid sex discrimination against fathers in the Family Court Services tell them to do ex parte. Those who participate in " Screenings, " rather than insisting on a trial, have waived their constitutional

rights to a trial by going there under the local rules, and the Petitioner will not waive his right to a proper trial with a proper and competent judge.

INCORPORATION OF POINTS AND AUTHORITIES

The attached Memorandum of Points and Authorities in support of emergency stay is hereby incorporated by reference as is set forth herein in full.

CONCLUSION

Since the judge was obviously disqualified due to her well-known bigotry and hatred of men and custodial fathers, and such bias and bigotry was evidenced by her refusal to provide for any lawful service of process, lawful notice, lawful time to prepare and defend,

lawful hearing, and required attention to the standard of the " best interests of a child, " and she believes that she can " punish " the men she hates so much by destroying their and their children's lives with no adherence to any procedural or substantive due process of law, and it is obvious she committed every known error of law ever committed in a custody matter, the Petitioner has no remedy at law to prevent the immediate abduction/kidnapping and disappearance of his child once again caused by the lower court's vendetta of sex discrimination against men and the destruction of his child's emotional and physical health and the endangerment by it of his child's life. He can not

file with the lower court as this will result in an immediate disappearance of his daughter, possibly permanently, so that he will never see his only child ever again.

The Petitioner respectfully prays this court will issue an emergency stay and order the return of his daughter to the only home she has ever had before her life is further endangered by the unconstitutional order at issue.

An application for waiver of notice is hereby attached, as any notice will result in the second abduction/ kinapping and disappearance of his child by the real party in interest as occurred before, and may result in his never seeing his child again, and her life will be

so destroyed that she will never be able to be healthy or whole again.

RESPECTFULLY SUBMITTED,

Dated: September 7,1990

JAY GRUSHKIN
Petitioner Pro Se

VERIFICATION

I have read, prepared, and signed the above application for an emergency stay order to prevent my daughter's second kidnapping and abduction and disappearance in the last three years. It is based on my personal knowledge, information and belief, and is made under the penalties of perjury and executed this 7th day of September, 1990.

JAY GRUSHKIN
Petitioner Pro Se

COURT OF APPEALS FOR THE SIXTH

APPELLATE DISTRICT COURT

STATE OF CALIFORNIA

Jay Grushkin,	)	
	)	
Petitioner	)	Docket no.
	)	
vs.	)	Santa Clara
	)	Sup. Ct.
	)	Case nos.
	)	607271
	)	and 607066
Santa Clara	)	
Superior	)	
Court	)	
Respondent	)	
vs.	)	
	)	
Rosie Grushkin,	)	
	)	
Real Party in	)	
Interest	)	
	)	
	)	

MEMORANDUM OF POINTS AND

AUTHORITIES IN SUPPORT OF

EMERGENCY STAY

I.

THE ORDER CHANGING CUSTODY IS VOID AS ISSUED EX PARTE WITH NO SERVICE AND NO NOTICE

The applicable law

The controlling case is from the Second District Court of Appeals, O'Brien v. CSEH, (1983), 196 Cal. Rptr. 409, 148 Cal.App.3d 961. The Court held entering orders without adequate notice and service of process is unconstitutional under both the due process and equal protection of the laws clauses under Article 1, section 7 of the California Constitution and the fourteenth and fifth Amendment to the United States Constitution.

C.C.P. sections 1010-1015 require notice by mail 15 days in advance in the case of a pending court action where service has already properly been made. C.C.P. section 415.1 et. seq. requires personal service in hand in the instant case where the matter is

post-judgment.

Notice is essential to due process." Engrained in our concept of Due Process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend the charges. Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed. Notice is required in a myriad of situations where a penalty or forfeiture might be sufferred for mere failure to act." Lambert v. California (1958) 355 U.S. 225, 78 S. Ct. 240, 243, 2 L.Ed 2d.228, 231.

As stated in Mullane v. Central Hanover Bank and Trust Co. (1950), 339 US 306, 94 L.Ed. 865, 873, 70 S. Ct., notice is essential

to due process of law, wherein the court stated as follows:

> " An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Summary process is unconstitutional. Groppi v. Leslie (1972) 404 U.S.496, 92 S. Ct. 582, 30 L. Ed. 2d. 632. The power of the state is subject to the restrictions imposed by the Federal Constitution. McKnett v. St. Louis and S.F.R. Co., 292 U.S. 230, 78 l. Ed. 1227, 54 S. Ct.690, rehearing denied in 292 U.S. 613, 78 L. Ed. 1472. The taking of property without notice is unconstitutional. Goss v. Lopez, 419 U.S. 565, 42 L.Ed.2d. 725, 95

s. Ct.729: Fuentes v. Shevin, 407 U.S. 67, 32 L. Ed. 2d. 556, 92 s. Ct. 1983, 10 UCCRS 913, re den 409 US 902, 34 L.Ed.2d.165.

Proceedings which wholly deny notice or hearing, or provide inadequate methods are lacking in due process. Morgan v. United States, supra; Ohio Bell. Tel. Co. v. Public Utilities Comm. (1939) 301 U.S. 292, 57 S. Ct.724, 728, 81 l. Ed. 1093, 1099: Kwock Jan Fat v. White (1920) 253 U.S. 454, 40 S. Ct. 566, 64 L. Ed. 1010: Kwong Hai Chew v. Colding (1953) 344 U.S. 590, 73 S. Ct. 472, 97 L. Ed. 576. When an interested party is not given notice, the proceedings are void. Armstrong v. Manzo (1965) 380 US.

The case of Saunders v. Shaw,

244 U.S. 317 (1917) confirms that entry of orders without any opportunity to introduce any evidence denies due process of law and is void.

Facts, Analysis, and Argument

As the file indicates, the order was entered without service, notice or hearing.

II.

MANDATE IS PROPER TO COMPEL THE PERFORMANCE OF AN ACT WHICH THE LAW SPECIFICALLY ENJOINS AS A DUTY RESULTING FROM AN OFFICE, TRUST, OR STATION

The foundation for a Writ of Mandate is to compel an act which the law specially enjoins as a duty resulting from an office, trust, or station and wherein no discretionary possibilities lie. Larson v. City of Redondo Beach (1972) 103 Cal. Rptr. 592, 27 C.A. 2d 496,

Hawthorn v. County of Beverly Hills (1952) 2465 P. 2d 352, 111 C.A. 2d 723, Palmer v.Fox (1953) 258 P. 2d 30, 118 C.A. 2d 453.

Where the duty is that of the judiciary to follow the controlling law, a writ of mandate lies, especially where the claim is that the Court lacked jurisdiction over the parties or the subject matter or acted in violation of their clear duty to afford due process and equal protection of the laws, regardless of sex. Molar v. Gates (1979),159 Cal.Rptr. 239, 98 C.A.3d, Blue Chip Stamps v.Superior Court of Los Angeles County (1976) 134 Cal.Rptr. 393, 556 P. 2d 775,18 C. 3d 381, Franchise Tax Board v. Municipal Court, Los Angeles Dist. Clerk of Municipal Court (1975) 119

Cal.Rptr. 552, 45 C.A. 3d 377, Westminster School Dist. of Orange County v. Superior Court for Orange County (1972) 104 Cal. Rptr. 388, 28 C.A.3d 120, Chapin v. Superior Court of Tuolumne County (1965) 44 Cal. Rptr. 496, 234 C.A.2d 571, W.A. Rose Co. v. Municipal Court for Oakland-Piedmont Judicial Dist., Alameda County (1960) 1 Cal.Rptr. 49, 176 C.A. 2d 67, City and County of San Francisco vs. Superior Court in and for City and County of San Francisco (1928) 271 P. 121, 94 C.A. 318; Beardsley Land and Investment Co. v. Superior Court in and for Los Angeles County (1930) 285 Cal.Rptr. 908, 104 C.A. 255.

A Writ of Mandate will lie even if the Court has both subject

matter and personal jurisdiction, when it acts in excess of its jurisdiction in not following the mandate of constitutional provision, statute, or rule of decisional law of a higher court requiring that it exercise its power over the parties and the cause in a particular manner. Yoakum vs. Small Claims Court of Los Angeles Judicial Dist. Los Angeles County (1975) 125 Cal. Rptr. 882, 53 C.A.3d 398.

Even in cases of discretionary power, a Writ of Mandate will lie against a Court when there is a palpable abuse of discretionary power, where the act is ministerial and the duty becomes absolute, and there is no adequate remedy at law. Green v. Superior Court in and for

the City and County of San Francisco (1933) 23 P. 2d 785, 133 C.A. 35, Board of Trustees of Calaveras United School Dist. v. Leach (1968) 65 Cal. Rptr. 588, 258 C.A. 2d 281.

Facts, analysis, and argument

The respondent Court failed in its ministerial duty to provide service of process, notice, and hearing to the Petitioner prior to entry of an order changing his parenting rights and his custody of his child.

III.

PETITIONER HAS NO PLAIN, SPEEDY, OR ADEQUATE REMEDY AT LAW, AND IT WOULD SERVE THE INTERESTS OF JUDICIAL ECONOMY TO RESOLVE THE ISSUES PRESENTED HERE WITHIN THIS WRIT PROCEEDING

The applicable law

It is a requirement for the issuance of a writ of mandate that

there be no " plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc. s. 1086).

Facts, analysis, and argument

Petitioner submits such is this case. As a recitation of the history shows, it took over a year to obtain a trial; when the trial was scheduled and the mother, real party in interest, had abducted and kidnapped the child three months previously, the Court sought to take the case off-calendar, because of its sex discrimination against fathers seeking custody of their children and its policy of never allowing fathers a custody trial. Finally, such an order was obtained and Natassia allowed to have a stable and secure home with her father

for the last two and one half years Now, without notice, and pursuant to its policy of sex discrimination against fathers, it has ordered Natassia's stability and security destroyed with her father and ordered her removed from her home to her unstable mother's home without service, notice, or hearing. It would take months and maybe years to undo this Ex Parte catastrophe. In the meantime, Natassia would not be permitted to enroll in school, be with her family and friends or see her father or paternal grandparents and would suffer a third severe emotional trauma and set-back in less than six years of life, permanently scarring her sense of stability and security that it has taken the

Petitioner/father two and one half years to create to undo the after-effects of the trauma of the kid-napping/ abduction by her mother.

It is cruel and horrifying to see a Court of law so destroy children's lives with no due process of any law. And there is no plain, speedy, or adequate remedy at law to stop the order from being implemented unless this court grants a stay and issue its Writ directing the lower court to vacate its void Ex Parte order.

IV.

PETITIONER IS ENTITLED TO AN AWARD OF REASONABLE ATTORNEY'S FEES UNDER THE PROVISIONS OF SECTION 1021.5 OF THE CODE OF CIVIL PROCEDURE

The applicable law

Section 1021.5 of the Code of Civil Procedure (the so-called

private Attorney General statute) permits an award of attorney's fees to a prevailing party whenever the action has resulted in the enforcement of an important right affecting the public interest.

Facts, analysis, and argument

Petitioner is enforcing a valuable right of the public to end the sex discrimination, in violation of State law, that is endemic in the lower court, and their policies and practices of issuing orders with no notice, hearing, or legal process depriving litigants of their fundamental due process rights.

RESPECTFULLY SUBMITTED,

Dated: September 6, 1990

JAY GRUSHKIN
Petitioner In Pro Per

COURT OF APPEALS FOR THE SIXTH

APPELLATE DISTRICT COURT

STATE OF CALIFORNIA

Jay Grushkin, Petitioner vs. Santa Clara Superior Court Respondent vs. Rosie Grushkin, Real Party in Interest	Docket no. Santa Clara Sup. Ct. Case nos. 607271 and 607066

APPLICATION FOR EMERGENCY WAIVER OF NOTICE DUE TO EXTREME KIDNAPPING RISK DUE TO PRIOR KIDNAPPING AND FLIGHT AND CRIMINAL APPREHENSION

Pursuant to California Rules of Court, rule 56 (b), (1), the " Court, in its discretion may allow the filing of the petition

without service. "

Petitioner requests waiver of notice due to the obvious threat of a second abduction, kidnapping, and disappearance by the real party in interest if notice is given, as occurred prior thereto.

Exhibit A states, " Physical custody of Natassia is awarded to Petitioner with supervised visitation to respondent, if any ; no child support; upon child's recovery, referred for screening; Respondent is in contempt of Court in 18 counts of thwarting visitation; Bench warrant shall be issued for Respondent's arrest, with $ 1,000 Bail, Sentencing reserved; Court orders Abduction and Kidnapping complaint to Office of District Attorney; Sanctions of $ 2,000

imposed against Respondent, $ 1,000 to Petitioner, $ 1,000 to Attorney Betsey Warren Lebbos. The Court reserves action of the Motion for Joinder, until the child is recovered."

Pursuant to Ca. Family Law Rules, Rule 1225, (a) an application for an injunctive or other order against a party permits, under C.C.P. section 526, 527, 528, and 529, waiver of notice when the applicant will suffer immediate and irreparable harm before the adverse party could be heard in opposition. Also, since the order at issue is void as issued ex parte, no significant direct burden or inconvenience to the adverse party will be likely to result from this Court issuing its order for Natassia to

be returned to her home today. She has been away only fourteen hours. Waiver of notice is granted when " Notice of the application would frustrate the purposes of the Orders sought herein. " If Notice is given, Natassia will disappear and be kidnapped and abducted once again. Last time, she went to Colorado and then roamed the southwestern states for the year. If the mother now disappears, knowing the order was obtained through her and her lawyer's obvious frauds, she is teaching Natassia that crime and deceit and crookedness pays off and honesty and decency are bad and are punished. Now that the mother has a " real," but fraudulently-obtained court order, we will not be able to

track her down and recover poor scarred Natassia.

I truly fear for my child's safety. Her mother is not normal at all. She is dangerously defiant of all norms of behavior. She has no compunction about lying, cheating, stealing, and deliberately defying all court orders. She made it a game for Natassia to play hiding from the police that entire year. She thinks it is funny to cheat the cops and the law and judges. My daughter will grow up psychotic and just as dangerous as her mother is.

I, therefore, request an emergency waiver of notice.

I declare under the penalties of perjury that the foregoing is true and correct, based on my own personal knowledge, information, and

belief, and this declaration is executed under the penalties of perjury this 7th day of September, 1990.

JAY GRUSHKIN
PETITIONER

COURT OF APPEALS FOR THE SIXTH

APPELLATE DISTRICT COURT

STATE OF CALIFORNIA

Jay Grushkin,	)	
	)	
Petitioner	)	Docket no.
	)	Santa Clara
vs.	)	Sup. Ct.
	)	Case nos.
	)	607271
	)	and 607066
Santa Clara Superior Court	)	
	)	
Respondent	)	
	)	
vs.	)	
	)	
	)	
Rosie Grushkin,	)	
	)	
Real Party in Interest	)	
	)	
	)	

EMERGENCY PETITION FOR WRIT OF MANDATE

1. Petitioner is and and at all times material hereto, a resident of Sunnyvale in the County of Santa Clara. He is the father of Natas-

sia, age 5, who has resided with him under his care, custody, and protection since March, 1988, pursuant to an exclusive custody order awarded to him August 24, 1987. Said order prohibits any unsupervised access by the mother due to her criminal acts as herein specified of abduction and kidnapping and 18 counts of contempt.

2. Respondent Court is a Superior Court of law located in San Jose, Ca. which issued the order at issue.

3. Real Party in Interest is believed to reside nowhere,has no lawful address, but is believed to inhabit the environs of the County of Santa Clara and has done so, since she was released from jail two years ago. She is the non-

custodial mother of Natassia, age 5, who obtained the ex parte change of custody herein involved.

4. Respondent Court has a clear and present duty to ensure that no order of change of custody issue without service of process on Petitioner herein, according to the mandatory provisions of both state law, and state and United States Constitutional provisions concerning requisite procedural due process of law. Respondent Court owed the Petitioner a legal duty to not issue any such order without service of process, notice, an opportunity to be heard, and grounds in consonance with substantive due process of law and protection for said child that she would not be, once again, abducted and kidnapped

by her peripathetic mother who has no home and had a clear duty to not practice sex discrimination against custodial fathers.

5. On September 6, 1990 with no notice or service as required by law, and no hearing, and no grounds, the Honorable La Doris Cordell, ex parte, issued an order reversing the prior Court order, entered after a full trial in which Petitioner was awarded exclusive custody of his daughter, Natassia and the mother, real party in interest, was ordered to have no unsupervised visitation rights due to her serious emotional problems and criminal abudction and kidnapping of said child for almost a year, which resulted in the mother's arrest on a bench warrant,

citation for 18 counts of contempt, and her imprisonment in jail.

6. The Ex Parte order gives no rights to Father. It gives ex parte exclusive custody to the dangerous mother. It has no address requirements or limitations on out-of-state flights and disappearances. The mother has no address. She is a vagrant. The Court ignored the mother's criminal record of kidnapping and abduction for a year and her flight to avoid criminal prosecution for a year, and the mother's imprisonment on these charges and the severe trauma to the child from " hiding out from the police " for a year.

7. Statistics show that the Respondent Court has the worst record of sex discrimination

against fathers in the state and is known for outrageous abuses against fathers. Petitioner requests this Court permit him to present these figures and studies, so that this Court will be informed that the issue herein involved, is that of a pattern and practice of deliberate sex discrimination by the Santa Clara Family Court, which already has caused his daughter severe harm and him severe loss of his parenting rights for years. Only after a Herculean and constant struggle for minimum rights, and in the face of a kidnapping and abduction of his daughter, was he even permitted to be heard at all by said Respondent Court three years ago. Now he is not even served with any papers. The Court three years ago did not

even want to give him a trial and tried to take the case off calendar, rather than allow him to present his custody case and prevail to raise his daughter in a stable home. Now it discriminates by making sure that the thousands of dollars spent by a father to protect her life, with private detectives, and a constant battle to have minimum rights against a blatantly sexist and sex discriminating court and the last three years of trying to undo the harm caused by this sexist court to his seriously traumatized child who " hid out from the police " for a year, only to have all the gains and strides in her stable home with her father and grandparents of the last three years wiped out in less

than five minutes by a judge who hates men. The hatred itself is of no consequence, except when it is so outrageous, that a five year old's life is seriously endangered, just so a bigoted and biased judge can express her hatred.

8. The fathers have no service, notice, or even the right to appear in a court. By reason of said blatant sex discrimination against fathers and their parenting rights, Petitioner requests this Court order the lower court to cease and desist its violation of state law and the United States Constitution which prohibits sex discrimination in state-sponsored services available to the Public.

6. Petitioner has no plain, speedy, or adequate remedy at law other

than the relief sought in this petition.

7. Petitioner will suffer the loss of his parenting and custodial rights and his daughter will suffer severe emotional turmoil and disturbance if this Court does not intervene to stay the ex parte order of the lower court so as to ensure to him and his child requisite due process of law and a minimum degree of equal protection of the law.

WHEREFORE, Petitioner respectfully prays that :

1. The Court immediately stay the order of September 6, 1990 of the lower court.

2. An alternative writ of mandate issue under the seal of this Court commanding the Santa Clara Superior

Court to void the Ex Parte order of September 6, 1990 forthwith and cease and desist its sex discrimination practices agains fathers in said court, or to show cause before this Court, at a time and place then or thereafter specified by court order, why the Santa Clara Superior Court has not done so and why a peremptory writ should not issue.

3. On the return of the alternative writ and hearing on the order to show cause, a peremptory writ of mandate issue under seal of this Court compelling respondent to act as described in paragraph 2.

4. The Court award petitioner the costs of this action and reasonable attorney's fees.

5. The Court grant such other re-

lief as it may deem just and proper.

Respectfully Submitted,

Dated. September 7, 1990

JAY GRUSHKIN
Petitioner In Pro Per

VERIFICATION

I, the undersigned declare :

I am the petitioner in this action. All facts alleged in the above document are true and correct and made of my own personal knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 7, 1990 at San Jose, California.

Dated. September 7, 1990

JAY GRUSHKIN
Petitioner In Pro Per

COURT OF APPEALS FOR THE SIXTH

APPELLATE DISTRICT COURT

STATE OF CALIFORNIA

Jay Grushkin, Petitioner vs. Santa Clara Superior Court Respondent vs. Rosie Grushkin, Real Party in Interest	Docket no. Santa Clara Sup. Ct. Case nos. 607271 and 607066 Declaration of No Notice

I, Betsey Warren Lebbos, do hereby declare that I am a duly licensed attorney at law and am the attorney of record herein for the Petitioner. I have been an attorney for nineteen years. I am not and have never been suspended or disbarred.

Pursuant to the state law cited, a post-dissolution judgment motion is required to be served on both the party himself and his attorney of record in the dissolution proceeding. I obtained the Dissolution Judgment and exclusive custody order with only supervised visitation to the real party in interest if and when the child was ever recovered from the abduction and kidnapping by the mother. The mother was found guilty of 18 counts of contempt. I did so in 1987. It took almost one entire year to track down the mother. She had fled to Colorado and to various states and was hiding out from the police with the child.

She was finally apprehended by the police about one year later.

She was arrested and imprisoned on the Court's bench warrant. Natassia, who was very traumatized by what had occurred, was placed in her father's exclusive custody pursuant to the court order, and, over the last three years, at various times, I have seen with her father and her wonderful grandparents' who adore her, that Natassia was blossoming into feeling finally " safe." From a scared, scarred, miserable, vagabond child, she had started to feel truly " safe, " with a real home for herself with lots-of friends, her grandmother home to care for her all day, and her grandfather doting on her, and her father devoting his life to trying to undo the horror of the abduction and

kidnapping she had suffered.

When I received a call last night that Natassia had once again been taken by the mother ex parte, I could not believe it. The horror of the Police all over again taking that small child is like putting that little girl in a concentration camp to be abused all over again ! I thought I was used to the unnecessary murders, the unnecessary suicides, even of the children I saw, and the embezzlements caused by the Santa Clara Family Court. But even after witnessing 16 unnecessary murders and suicides caused by that court, even I had to cry for little Natassia and her destroyed life. What craziness of abuse controls that court that babes have to suffer psychological

death at its sex discriminating and " no law " hands ?

In three years that litle girl, age 5, will have been abducted and kidnapped twice ! Both times it will be caused by that court. Only the Feds can clean it out.

I have never heard of Mr. Williams. My name and address and phone number are listed in the yellow pages under " Attorneys. " My phone number has been the same for about four years. At no time have I received any oral or any written notices from this Mr. Williams or his client about anything to do with the Gruskin case. I return phone calls in twenty-four hours. I have never received any phone calls or communications from this lawyer.

It is clear he is gloating that he pulled a " fast one " by mailing the letter to the party so that it would arrive AFTER THE HEARING and never mailing me any notice as required by law.

I certainly hope that this child will not die like the others. This child was almost quite " free." She should not be added to the dead bodies, victims of fraud and corruption in this County.

I declare under penalties that the foregoing is true and correct, based on my own personal knowledge, information, and belief, and this declaration is made under the penalties of perjury this 7 th day of September, 1990 at San Jose, Ca.

BETSEY WARREN LEBBOS
ATTORNEY AT LAW

RICHARD D. WILLIAMS
Attorney at Law
111 West St. John Street, Suite 904
San Jose, CA 95113
Telephone: (408) 295-6336

Attorney for respondent

Superior Court of California,
County of Santa Clara

Petitioner: Jay E. Grushkin

Respondent: Rosie Jiminez

Grushkin

Findings and Order After Hearing

X Child Custody

Case Number 607066 and
607271

This proceeding was heard as

follows :

1. a. Date; 9-6-90 x Dept. 17

b. Judge Hon. LaDoris Cordell
...

d. X Respondent in Court

A Attorney in court

Richard Williams

g. x Date: May 22,1990

By: Respondent

Petitioner: Jay Grushkin

Respondent: Rosie Jiminez Grushkin

Case Nos. 607066 and 607271

The Court orders:

x pending trial or until further order of this Court

Orders relating to children:

4a. x Custody of the minor children of the parties is fixed as follows: Natassia Grushkin, Custody to Respondent

4b. x Petitioner

1.x reasonable visitation rights with the minor children

.....

.....

Appendix E-2

19. x The minor child is to remain at the school where she is currently registered. Should Petitioner wish to contest this order the parties should immediately participate in screening through Family Court Services on an emergency basis.

Date: Sep 6 1990

La Doris Cordell

.....

Appendix E-4

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

BEFORE THE HONORABLE LA DORIS H. CORDELL, JUDGE

DEPARTMENT 17

IN RE THE MARRIAGE OF

JAY E. GRUSHKIN,

PETITIONER,

AND

ROSIE JIMENEZ,

RESPONDENT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 6, 1990

APPEARANCES:

FOR THE PETITIONER:

FOR THE RESPONDENT: RICHARD D. WILLIAMS, ESQ.

WORKED. HE HAS GOTTEN MAIL AT THAT COMPANY. THAT IS HIS ADDRESS.

THE COURT: AND YOU GOT NO RESPONSE?

MR. WILLIAMS: NO, NOT TO MENTION MRS. GRUSHKIN SPOKE TO HIM.

THE COURT: YOU MADE AN OFFER OF PROOF WITH REGARD TO THE SITUATION WITH THE CHILDREN.

MR. WILLIAMS: RIGHT.

THE COURT: REITERATE WHAT YOU ARE ASKING FOR.

MR. WILLIAMS : WE ARE ASKING FOR A CHANGE OF CUSTODY. THEY HAD MADE A CHANGE IN THE AGREEMENT THAT MRS. GRUSHKIN WOULD HAVE PRIMARY CUSTODY AND MR. GRUSHKIN WOULD HAVE REASONABLE VISITATION. HE BALKED AT TURNING THE CHILD OVER. SHE HASN'T SEEN THE CHILD IN THREE OR FOUR MONTHS OTHER THAN OCCASIONAL CONTACT --

THE COURT: ALL RIGHT. MS. JIMENEZ,

YOU HAVE A HOME SUCH THAT YOU CAN TAKE CARE OF THE CHILD?

MS. JIMINEZ: YES, AND I HAVE A JOB.

THE COURT: WHERE IS THE CHILD NOW?

MS. JIMINEZ: I GUESS IT'S WITH HIM.

MR. WILLIAMS: WITH HIS MOTHER.

THE COURT: THE LAST TIME YOU SAW THE CHILD WAS FOUR MONTHS AGO, FIVE MONTHS?

MS. JIMINEZ: FOUR MONTHS AGO.

THE COURT: THE LAST TIME YOU TALEKD WITH THE CHILD?

MS. JIMINEZ: I TALKED WITH THE CHILD ABOUT -- OFF AND ON, YOU KNOW --

THE COURT: WHEN IS THE LAST TIME YOU SPOKE WITH HER?

MS. JIMINEZ: LAST WEEKEND, YEAH.

THE COURT: HOW OLD IS THE CHILD?

MS JIMINEZ: FIVE.

THE COURT: THE CHILD IS IN SCHOOL?

MS. JIMINEZ: SUPPOSED TO START SCHOOL THIS YEAR, YES.

THE COURT: YOU DON'T KNOW WHAT SCHOOL?

MS. JIMINEZ: I DON'T KNOW WHAT SCHOOL.

THE COURT: MY CONCERN IS THAT IF WE CHANGE CUSTODY, IF THE CHILD IS ENROLLED IN SCHOOL, THEN THERE IS A CHANGE IN THE SCHOOL AND THAT'S GOING TO BE DISRUPTIVE.

MS. JIMINEZ: I AM WILLING TO KEEP THE SAME SCHOOL.

THE COURT: BUT YOU DON'T EVEN KNOW WHAT IT IS.

MR. WILLIAMS: IT'S SOMETHING THAT CAN BE ASCERTAINED.

THE COURT: IT WOULD BE REALLY NICE IF MR. GRUSHKIN WOULD JUST SHOW UP SO WE CAN TALK ABOUT THIS.

MR. WILLIAMS: IT WOULD BE NICE.

THE COURT: I AM CONCERNED ABOUT DISRUPTING THE CHILD'S LIFE. YO HAVEN'T SEEN HIM FOR FOUR MONTHS AND ALL OF A SUDDEN YOU ARE GOING TO SHOW UP AND TAKE HIM. FOUR MONTHS IS A LONG PERIOD OF TIME FOR A FIVE YEAR OLD AND I DON'T KNOW HOW WE ARE GOING TO GET MR. GRUSHKIN'S ATTENTION.

MR. WILLIAMS: WE WOULD BE WILLING TO COOPERATE AND GO TO MEDIATION.

THE COURT: I AM GOING TO CHANGE CUSTODY. KEEP THE CHILD IN THE SAME SCHOOL AT LEAST FOR A WHILE SO WE CAN GET CONGRUITY. IF IT TURNS OUT IT'S NOT POSSIBLE, IT CAN BE DONE LATER SO IT'S LEAST DISRUPTIVE IN THE CHILD'S LIFE. AT THAT POINT I WILL GET THE PARTIES IN EITHER FOR SCREENING OR MEDIATION. YOU TAKE THE LEAD ON THAT.

MR. WILLIAMS: I WILL DO THAT.

THE COURT: IF IT DOES CREATE A PROBLEM AND YOU WANT ME TO DO SOMETHING, GET BACK IN HERE AND I WILL SET A SCREENING.

MR. WILLIAMS: THANK YOU.

THE COURT: PHYSICAL CUSTODY OF THE MINOR CHILD IS WITH THE MOTHER. REASONABLE VISITATION WITH THE FATHER AND THE CHILD IS TO STAY IN THE SAME SCHOOL. IF MR. GRUSHKIN HAS SOME OBJECTION THE PARTIES ARE TO GET BACK IN COURT AND I CAN SET A SCREENING OR MEDIATION.

MR. WILLIAMS: THANK YOU.

---000---

STATE OF CALIFORNIA)
) SS.
COUNTY OF SANTA CLARA)

I hereby certify: That I, Judy Gilchrist, Certified Shorthand

Reporter, was appointed Reporter Pro Tempore; that I reported the same in machine shorthand and thereafter had transcribed into typewriting under my direction and control as appears by the foregoing; that the same is a full, complete and correct transcription to the best of my ability.

Dated:_____, 1990.

Judy Gilchrist, CSR #2997

Appendix F-8

ATTORNEY OR PARTY WITHOUT ATTORNEY
(Name and Address)

Betsey Warren Lebbos
P.O. Box 41193
San Jose California 95113

TELEPHONE NO:

(408) 279-3100

ATTORNEY FOR (Name)

JAY GRUSHKIN (Petitioner)

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SANTA CLARA

STREET ADDRESS
MAILING ADRESS
CITY AND ZIP CODE
BRANCH NAME

191 N. First St.

San Jose California 95113

MARRIAGE OF

PETITIONER: JAY GRUSHKIN

RESPONDENT: ROSIE GRUSHKIN

CASE NUMBER:

607271&607066

JUDGEMENT

X Dissolution

Appendix G-1

...

Date marital status ends: Aug. 24, 1987

1. This proceeding was heard as follows: X default or uncontested..

a: Date: August 24, 1987 Dept.: 22 rm.

b: Judge (name) Lois Kittle

c:

X Petitioner present in court

X Attorney present in court(name): Betsey Warren Lebbos

d:

Respondent present in court

Attorney present in court(name):

e:

Claimant present in court

Attorney present in court(name):

2. The court acquired jurisdiction of the respondent on (date): 8/7/86

Respondent was served with process X Respondent appeared

(Her Cross-Petition was consolidated in open court with # 6072717 & she generally appeared.)

3. THE COURT ORDERS, GOOD CAUSE APPEARING:

a. Judgement of dissolution be entered. Marital status is terminainated and the parties are restored to the status of unmarried persons

1. X on the following date (specify): Aug. 24 1987 ...

THE COURT FURTHER ORDERS

a. Jurisdiction is reserved to make other and further orders necessary to cary out this judgment....

d: X Jurisdiction is reserved over all other issues and all present orders remain in effect except provided below.

e. Any payment for spousal or

family support contained in this judgment shall terminate upon the death of the payee unless otherwise provided.

f. X Other (specify): Physical custody of Natassia is awarded to Petitioner with supervised visitation to respondent, if any: no child support; upon child's recovery referred for screening; Respondent is in contempt of Court in 18 counts of thwarting visitation (cont.)

JUDGE OF THE SUPERIOR COURT

Date:

Number of pages attached: 1

X Signature follows last attachment - NOTICE -

Please review your will, insurance policies, retirement benefit plans, and other matters you may want to

change in view of the dissolution or annulment of your marriage. Ending your marriage may automatically change a disposition made by your will to your former spouse. A debt or obligation may be assigned to one party as part of the division of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party. If you fail to pay any court-ordered child support, an assignment of your wages will be obtained without further notice to you. Adopted by Rule 1287 Judicial Council of California 1287 [Rev. July 1, 1985]

JUDGMENT

(Family Law)

Civil Code 4514

Post-Record Catalog #1287

In re: Marriage of Grushkin

Case No. 607271 & 607066

ATTACHMENT TO JUDGMENT

Bench Warrant shall be issued for Respondent's arrest, with $ 1,000.00 Bail, sentencing reserved; Court refers Abduction and Kidnapping complaint to Office of District Attorney; sanctions of $2,000.00 imposed against Respondent, $,1000.00 to Petitioner, $ 1,000 to Attorney Betsy Warren Lebbos. The Court reserves action on the Motion for Joinder, until the child is recovered.

9/17/87 Lois Kittle
COMMISSIONER LOIS KITTLE

RICHARD D. WILLIAMS
Attorney at Law
111 West St. John Street, Suite 904
San Jose, CA 95113
Telephone (408) 295-6336

Attorney for Rosie Jimenez Grushkin

COURT OF APPEALS FOR THE SIXTH

APPELLATE DISTRICT COURT

STATE OF CALIFORNIA

CASE NO. H007539

SANTA CLARA SUPERIOR COURT

CASE NO.: 60 72 71 and

60 70 66 CONSOLIDATED

JAY GRUSHKIN,

Petitioner,

vs.

SANTA CLARA SUPERIOR COURT,

Respondent,

vs.

ROSIE GRUSHKIN,

Real Party in Interest

DECLARATION IN OPPOSITION TO

EMERGENCY STAY

RICHARD D. WILLIAMS
Attorney at Law
111 West St. John Street, Suite 904
San Jose, CA 95113
Telephone: (408) 295-6336

Attorney for Rosie Jimenez Grushkin

COURT OF APPEALS FOR THE SIXTH

APPELLATE DISTRICT COURT

STATE OF CALIFORNIA

CASE NO.

SANTA CLARA SUPERIOR COURT
CASE NO.: 60 772 71 and
60 70 66 CONSOLIDATED

DECLARATION IN OPPOSITION TO

EMERGENCY STAY

JAY GRUSHKIN,
Petitioner ,

vs.

SANTA CLARA SUPERIOR COURT,
Respondent,

vs.

ROSIE GRUSHKIN,
Real Party in Interst.

I, RICHARD D. WILLIAMS, declare:

1. I am an attorney at law licen-

sed to practice before all of the courts before the State of California and I am attorney for Real Party in Interest, ROSIE GRUSHKIN. At the time we filed the motion, my client, MS. ROSIE GRUSHKIN, indicated that she had did not know Respondent's address but that she would get that for me. She was unable to obtain his address in time to mail him and give him the customary notice of the proceeding, but she handed him a copy and I called and personally spoke to Mr. Grushkin, acknowledging that he had not been properly served and not been given appropriate notice of the July 16, 1990 hearing. Mr. Grushkin and I agreed that the matter would be continued to the 15th of August, 1990, and

that he would be there with his attorney. I advised him that the parties would be ordered to mediation at Family Court Services who would sort the matter out. Mr. Gruskin failed to appear (as per his agreement) on August 15, 1990 at 1:30 p.m. and the Court ordered me to mail notice to Mr. Grushkin of a continued hearing date. As the Court was ordering a screening, as Mrs. Grushkin had not been allowed to see the child for four (4) months, the case was continued only to August 23, 1990, and notice was mailed to Mr. Grushkin. A copy of the letter an proof of service is attached marked Exhibit " A " and made a part hereof. The matter was continued again until August 29, 1990 at 1:30 p.m. and I was dir-

ected to send Mr. Grushkin yet another letter indicating there was a screening appointment and that if he failed to appear the Court would issue an order for temporary change of custody. A copy of that letter and proof of service is attached Exhibit " B " and made a part hereof. The last date was September 6, 1990, and again he failed to appear and the Court changed custody.

2. I am informed, belief, and thereupon allege that Mr. Grushkin is engaged in an act of fraud upon the Court of Appeals in that he has failed to attach the entire pleadings to his declaration. The portions he left out were the written agreements he made with Rosie Grushkin wherein he agreed to return custody to her and to take a

visitation schedule for himself. The agreements basically acknowledge that ROSIE GRUSHKIN did not try to steal the child but had moved within Santa Clara County during a period where Mr. Grushkin was not actively visiting the child. A copy of these " attachments" are attached marked Exhibit "C".

3. Further, Judge Cordell made it clear with her order that if Mr. Grushkin disagreed, he could come back to court for emergency screening and the court would reconsider its order. This could have been done without all of these dramatics.

I declare under penalty of perjury under the law of the State of California that the foregoing is

true and correct and that this declaration was executed on September 13, 1990, at San Jose, California.

RICHARD D. WILLIAMS,
Attorney for Real Party
In Interest

August 16, 1990

Jay E. Grushkin
c/o Lowe Point Company
1701 S. 7th Street
San Jose, CA 95112

Re: The Marriage of Grushkin
Case No.: 60 70 66 and
(Consolidated) 60 72 71

Re: Notice of Hearing

Dear Mr. Grushkin:

Please find enclosed a copy of a form entitled " Authorization for Calendaring." Please be informed that your next court date (as stated on the form) is August 23,1990 at 8:45 a.m. in Department 17 in Superior Court, San Jose CA. The court is located at 170 Park Avenue in downtown San Jose. Your attendance is mandatory so please make arrangements to attend.

Sincerely
ROBIN LANDIS
Secretary to Richard D. Williams,
:rl; en,cc: Ms.Rosie Jiminez-Grushkin)

Appendix H-6

In re: The Marriage of Grushkin

Case Number: 60 70 6 and 60 72 71

Consolidated

PROOF OF SERVICE BY MAIL

I declare that:

I am a citizen of the United States and employed in the County of Santa Clara, State of California; I am over the age of eighteen (18) years and not a party to the within-entitled action; my business address is 111 W. St. John Street, Suite 904, San Jose California 95113.

On the 16th of August, 1990, I mailed the documents: LETTER CONFIRMING NOTICE OF HEARING on the following in said action; by placing a true copy thereof enclose in a sealed envelope with postage thereon fully prepaid, in the

United States mail at San Jose, California, addressed as follows:

Jay E. Grushkin
c/o Lowe Paint Company
1701 S. 7th Street
San Jose, CA 95112

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 16, 1990, at San Jose, California.

ROBIN LANDIS

August 30, 1990

Jay E. Grushkin
c/o Lowe Point Company
1701 S. 7th Street
San Jose, CA 95112

Re: The Marriage of Grushkin
Case No.: 60 70 66 and
60 72 71
(Consolidated)

Re: Notice of Hearing

Dear Mr. Grushkin:

Please be advised that the Court has ordered you to appear for a screening in Department 17 at Santa Clara County superior Court on September 6, 1990, at 8:45 a.m. Should you fail to appear, as you have on August 15th and August 23rd, the Court will grant us a change of custody by default.

Sincerely,
RICHARD D. WILLIAMS
Attorney for Rosie Jimenez
RDW:rl
encls.
cc: Ms. Rosie Jiminez-Grushkin

August 31, 1990

In re: The Marriage of Grushkin

Case Number: 60 70 6 and 60 72 71

Consolidated

PROOF OF SERVICE BY MAIL

I declare that:

I am a citizen of the United States and employed in the County of Santa Clara, State of California; I am over the age of eighteen (18) years and not a party to the within-entitled action; my business address is 111 W. St. John Street, Suite 904, San Jose California 95113.

On the 31st of August, 1990, I mailed the documents:

LETTER CONFIRMING NOTICE OF HEARING

on the following in said action; by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in

the United States mail at San Jose, California, addressed as follows:

Jay E. Grushkin
c/o
Lowe Paint Company
1701 S. 7th Street
San Jose, CA 95112

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 31, 1990, at San Jose, California.

ROBIN LANDIS

STIPULATION AMENDING JUDGEMENT

The parties stipulate that the judgement of dissolution filed on Sept. 20, 1987 be amended as following;

1. Physical Custody of Natassia be awarded to the respondent Rosie Grushkin, but both having joint custody.

2. Child suport be awarded as previously agreed upon by both parties.

3. Visitation be awarded to Jay Grushkin as agreed to new visitation rights that Jay has agreed upon and the Rosie has read and agreed to sign, both parties having a copy.

4. Bench Warrant - That the Bench Warrant on Rosie be revoked, be dismissed from the court order and

that there be no sanctions imposed upon Rosie.

5. Criminal Warrant - That the Criminal Warrant imposed on Rosie ordered through the court be dismissed, and that there be no sanctions imposed upon Rosie.

Both parties agree to what has been stated:

Signed Rosie Grushkin Dated March 10-88

Signed Jay E. Grushkin Dated 3-10-88

VISITING RIGHTS REGARDING NATASSIA GRUSHKIN

I Jay Grushkin want to see Natassia every other weekend except when I call in advance that I can't make it. A weekend is considered from Saturday afternoon until Sunday evening. Also I would like occasional weekends and sharing of Holidays such as Christmas, Thanksgiving, New Years, etc.

OR

If Rosie Grushkin has an opportunity that would be beneficial and I would permit her to leave the area- I Jay Grushkin want to have Natassia for the Full Summer Season every year, with occasional visits during the rest of the year.

I Jay Grushkin want an absolute guarantee that the visiting rights

decided upon will be strictly adhered to and that Natassia will not "disappear" again.

I Jay Grushkin am paying adquate child suport. I want Rosie Grushkin to hold a steady job, as being on welfare would be a negative influence on Natassia through out her growing years.

I Jay Grushkin want full disclosure of current address and phone number of where Natassia is residing when she is with Rosie Grushkin.

Also I want the right to inspect the premises where she is living.

We have both read the above and fully understand it. We will adhere to these regulations.

Signed Rosie Grushkin Dated March 10-88

Signed Jay E. Grushkin Dated 3-10-88

In re: The Marriage of Grushkin

Case Number: 60 70 6 and 60 72 71

Consolidated

PROOF OF SERVICE BY MAIL

I declare that:

I am a citizen of the United States and employed in the County of Santa Clara, State of California; I am over the age of eighteen (18) years and not a party to the within-entitled action; my business address is 111 W. St. John Street, Suite 904, San Jose California 95113.

On the 13th of September, 1990, I mailed the documents:

DECLARATION IN OPPOSITION TO EMERGENCY STAY

on the following in said action; by placing a true copy thereof enclosed in a sealed envelope with

postage thereon fully prepaid, in the United States mail at San Jose, California, addressed as follows:

Jay E. Grushkin
1381 Franchere Place
Sunnyvale, CA 94087

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 13, 1990, at San Jose, California.

ROBIN LANDIS

RICHARD D. WILLIAMS 408-295-6336
Williams & Follesdal, Assoc. of Attorneys
111 West St. John Street, Ste. 904
San Jose, CA 95113

Attorney for Respondent

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SANTA CLARA

191 North First Street
San Jose, ca. 95113

Petitioner: JAY GRUSHKIN

vs.

Respondent : ROSIE JIMINEZ-GRUSHKIN,

NOTICE OF MOTION

XX Child Custody
XX Attorney Fees and Costs
X Visitation

Case number

60 72 71 and
60 70 66 (consolidated)

1. To.. JAY E. GRUSHKIN

2. A hearing on this motion for the relief requested in the attached application will be

held as follows :

(If child custody or visitation is at issue in this proceeding, Civil Code section 4607 requires mediation before or concurrently with the hearing below :

---

a. date: 7-16-90 time: 1:30 P.M. in dept. 17

---

b. Address of Court... X

25 North First Street
San Jose, Ca. 95113

3. Supporting attachments

a. Completed Application for Order and Supporting Declaration and a blank Responsive Declaration

Date: May 16,1990 Richard Williams

.....

(see reverse For proof of Service by Mail)

Appendix I-1a

Petitioner: JAY GRUSHKIN
Respondent: ROSIE JIMINEZ GRUSHKIN

Case number: 607066 and 607271

PROOF OF SERVICE BY MAIL

a. I am over the age of 18, not a party to this cause, a resident or employed in the county where the mailing took place, and my residence or business address is:

b. I served copies of the following papes by enclosing them in a sealed envelope with postage fully prepaid depositing them in the United States mail as follows:

(1) Papers served:

(a) A completed Application for order and supporting Declaration and a blank Responsive Declaration

....

(2) Manner of Service:

(a) Date of Deposit:

(b) Place of Deposit(city and state):

(c) Addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 16,1990

ROBIN LANDIS	Robin Landis
TYPE OR PRINT NAME	Signature of Declarant

Appendix I-2b

Petitioner: JAY GRUSHKIN
Respondent: ROSIE JIMINEZ GRUSHKIN

Case number: 607066 and 607271

APPLICATION FOR ORDER AND
SUPPORTING DECLARATION OF

1. XX Child custody ....

a. Child | b. Request custody to

Name and Age	Name
NATASSIA GRUSHKIN	Respondent

c. X Modify existing order

(1) filed on (date):

(2) ordering (specify):

Custody changed to Petitioner

d. X Respondent shall have the temporary physical custody, care and control of the minor children x subject to the other's rights of visitation as follows : (see attached visitation agreement)

X Child Visitation

a. x reasonable to Petitioner

5. x attorney fees and costs

a. x Fees: $ 750.00

b. x Costs: $ 28.00

.....

ATTACHMENT- 14

I, ROSIE GRUSHKIN, declare:

1. I am the Respondent in the foregoing action and the matters herein alleged are alleged in my own personal knowledge, and if called upon, I can competently testify in court to the matters herein alleged:

2. Initially, my husband and I agreed that I would have physical custody of our child, Natassia, and we agreed upon a visitation schedule.

3. Thereafter, we went through a period where Petitioner did not visit with the child as per our

agreement, and I found it convenient to move to the Morgan Hill area of the Santa Clara County. I notified his mother that I was moving, but I did not have any conversation with Petitioner at that time.

4. Thereafter, Petitioner filed an Order to Show Cause for change of custody and alleging that I had hidden myself with the child. I rceived no notice of this Order to Show Cause but was later informed that on August 24,1987 that an Order to Show Cause Hearing had been held and that a bench warrant was issued for my arrest with $ 1, ØØØ.ØØ bail and the custody of the child had been changed pending emergency screening based upon my alleged flight with the child and

think it was mentioned in the Order 10 counts of contempt against me.

5. On March 10, 1988, my husband and I signed an agreement (a copy of which is attached marked Exhibit " A" and made a part hereof) where in we agreed that I was not in contempt, that the bench warrant should be dismissed and that there be no sanctions upon me, and the agreement gave me physical custody of NATASSIA again subject to an agreed visitation schedule. A copy of our visitation schedule is attached marked Exhibit " B" and made a part hereof.

6. I am currently seeking an order of the Court that our agreement entered on March 10,1988 be made an order of the Court and that the times agreed to be performed.

7. I believe it is in the best interests of our child that I be her primary care giver and I am fully willing to abide by the visitation agreement.

I declare under penalty of per jury under the law of the State of California that the foregoingis true and correct and that this declaration was executed on May 16, 1990 at California.

ROSIE JIMINEZ GRUSHKIN

---

(3)

90-715

No.

Supreme Court, U.S.
FILED
NOV 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JAY GRUSHKIN,

Petitioner

vs.

SANTA CLARA SUPERIOR COURT

Respondent

SUPPLEMENT TO APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JAY GRUSHKIN
Petitioner In Pro Per
1381 Franchere Place
Sunnyvale, Ca. 94087

408-739-1829

November 5,1990

REPORTED BY: JUDY GILCHRIST, CSR #2997

REPORTER PRO TEMPORE

SAN JOSE CALIFORNIA SEPTEMBER 6, 1990

PROCEEDINGS

THE COURT: NUMBER 8, GRUSHKIN.

MR. WILLIAMS: RICHARD WILLIAMS APPEARING FOR THE MOVING PARTY, MRS. GRUSHKIN. IN THIS MATTER WE CONTINUED SO I COULD SERVE A PROOF OF SERVICE AND LETTER ON MR. GRUSHKIN SO HE COULD APPEAR. HE IS NOT HERE AND HE IS AWARE OF IT. THE COURT INDICATED THAT YOU WOULD GIVE US A CHANGE OF CUSTODY ORDER. IF I MAY APPROACH THE BENCH. THIS IS THE LETTER I SENT IN.

THE COURT; IT WAS SENT TO A PLACE CALLED LOWE PAINT COMPANY ?

MR. WILLIAMS; THAT'S WHERE HE

Law Offices of

Williams & Follesdal

An Association of Attorneys

11 W. St. John Street, Suite 904

San Jose, CA 95113

SAN JOSE CA 95133

PM 4 SEP 1990

Mr. Jay E. Grushkin

c/o

Lowe Paint Company

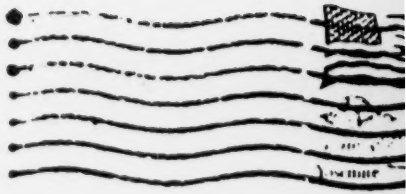
1701 S. 7th Street

San Jose, CA 95112

PERSONAL AND CONFIDENTAL

Appendix H-11a

Law Offices of
Williams & Follesdal
An Association of Attorneys
111 W. St. John Street, Suite 904
San Jose, CA 95113



Mr. Jay E. Grushkin
c/o
Lowe Point Company
1701 S. 7th Street
San Jose, CA 95112

PERSONAL AND CONFIDENTIAL